

v. 2470  
No. 11625

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see vol. 2469  
United States

## Circuit Court of Appeals

For the Ninth Circuit.

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ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, Evelyn Hamburger, Executrix,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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## Transcript of the Record

In Two Volumes

VOLUME II

Pages 313 to 507

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Upon Petition to Review a Decision of the Tax Court  
of the United States



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Upon Petition to Review a Decision of the Tax Court  
of the United States





RESPONDENT'S EXHIBIT A

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 115120

In the Matter of the Estate  
of

M. A. HAMBURGER,  
Deceased.

ORDER AND DECREE SETTLING FINAL AC-  
COUNT AND FOR DISTRIBUTION

D. A. Hamburger, as Executor of the Last Will and Testament of Moses Asher Hamburger, whose name is generally written M. A. Hamburger and sometimes written Moses A. Hamburger, deceased, having filed in this Court his duly verified Final Account and Report as such Executor, and a Supplemental Account, duly verified, and having filed with said Final Account and Report his Petition praying for distribution of the estate of said deceased, and said Final Account and Report, said Supplemental Account, and said Petition for Distribution coming on regularly to be heard on this 4th day of October, 1935, said Executor appearing by his attorneys, Messrs. Mitchell, Silberberg & Knupp, Belle Alice Nathan appearing by her attorneys, Messrs. Newlin & Ashburn, Evelyn Hamburger and Jennie H. Marx appearing by their attorneys, Messrs. Finlayson, Bennett & Morrow, and Florence Hamburger Bryant, Arthur M. Ham-

## Respondent's Exhibit A—(Continued)

burger and Howard Hamburger appearing by their attorney, Frederick C. Bryan, Esq., and witnesses having been sworn and examined, and evidence in support of said Account and said Petition for Distribution having been heard and considered;

And it now appearing to the satisfaction of the Court, the Court now finds: that notice of the time and place fixed for the hearing of said Final Account and Report and said Petition for Distribution have been given in all respects for the time, to the persons, and in the manner required by law; that no written objections to said Final Account and Report, to said Supplemental Account, or to said Petition for Distribution have been filed herein, and that at the time of said hearing no person objected thereto, or opposed the distribution of the estate in the manner prayed for in said Petition for Distribution; that said Final Account and Report and said Supplemental Account are in all respects full, true and correct and that said Executor has correctly reported and fully accounted [342] for all property and all receipts of the estate of said deceased coming into his hands and that each and all of the disbursements made by said Executor are proper charges against the estate of said deceased and that in and by the schedule attached to said Final Account as Schedule "E," and in and by the schedule attached to the Supplemental Account as Exhibit "C," said Executor has correctly apportioned and segregated, as between principal and income, all the receipts and disbursements of said

## Respondent's Exhibit A—(Continued)

Executor and has therein and thereby correctly set forth the total amount of net income in the hands of the Executor for distribution to the Trustee for the benefit of the persons hereinafter named accruing during the administration of said estate to this date.

And the Court further finds that each and all of the allegations contained in the Petition for Distribution on file herein are true.

Wherefore, It Is Ordered, Adjudged and Decreed that the Final Account and Report of said Executor and the Supplemental Account of said Executor should be, and each thereof is, hereby settled, approved, allowed and confirmed as filed.

It Is Further Ordered, Adjudged and Decreed that notice to creditors of the Estate of said deceased has been given in all respects for the time and in the manner required by law; that all claims against the estate of said deceased presented to said executor, on file in this Court, have been fully paid and satisfied, excepting only the claim of W. E. Chamberlain and Eleanor G. Chamberlain, the claim of Alexina Beam, and the amount due A. Hamburger & Sons, Inc., for money loaned to the Executor and that each and all of said persons have agreed upon the terms and conditions hereinafter set forth that distribution of the estate of said deceased might be made, without payment of said claims and obligations prior to distribution; that all inheritance taxes due to the State of California or to the United States of America, all local, municipi-

## Respondent's Exhibit A—(Continued)

pal [343] or county taxes against any property belonging to the estate of said decedent, and all costs, charges and expenses of administration have been fully paid and discharged and that said estate is now in condition to be distributed to the persons entitled thereto under the terms of the Last Will and Testament of said deceased. That all taxes imposed upon said Executor under the provisions of the "Personal Income Tax Act of 1935" which have become payable have been paid and that no other taxes imposed under said Act will become payable from said Executor. That the deceased died testate and that the Last Will and Testament of said deceased, bearing date the 18th day of August, 1930, was admitted to probate by order of this Court duly and regularly made and entered on the 1st day of December, 1930, and that the order admitting said will to probate has become final. That the petitioner herein is the duly appointed, qualified and acting Executor of the Last Will and Testament of said deceased. That the names, ages and places of residence of the legatees and devisees named in said Will are as follows, to wit:

Names	Places of Residence	Relationship
David A. Hamburger	2401 N. Vermont Ave., Los Angeles, California	Brother
Belle Alice Nathan	505 S. Windsor Blvd., Los Angeles, California	Sister
Evelyn Hamburger	9514 Wilshire Blvd., Beverly Hills, California	Sister
Jennie H. Marx	9514 Wilshire Blvd., Beverly Hills, California	Sister



Respondent's Exhibit A—(Continued)

Names	Places of Residence	Relationship
Florence Hamburger Bryan	355 S. Rossmore, Los Angeles, California	Niece
Arthur M. Hamburger	2401 North Vermont Ave., Los Angeles, California	Nephew

(All of the foregoing persons being over the age of majority)

Howard Hamburger (Aged 15 years)	2401 North Vermont Ave., Los Angeles, California	Nephew
Farmers & Merchants National Bank	Fourth and Main Streets, Los Angeles, California	.....

That the names, ages and places of residence of the next of kin and heirs at law of said deceased are as follows: [344]

Names	Places of Residence	Relationship
David A. Hamburger	2401 N. Vermont Ave., Los Angeles, California	Brother
Belle Alice Nathan	505 S. Windsor Boulevard Los Angeles, California	Sister
Evelyn Hamburger	9514 Wilshire Boulevard Beverly Hills, California	Sister
Jennie H. Marx	9514 Wilshire Boulevard Beverly Hills, California	Sister

(All of the above named persons being over the age of majority)

It Is Further Ordered, Adjudged and Decreed that all the rest, residue and remainder of the estate of said testator in the hands of said Executor for distribution, hereinafter particularly described and set forth should be, and the same is hereby, distributed as follows, to wit:

To David A. Hamburger, as Trustee, the whole thereof, to have and to hold the same upon the following trusts, to wit:

(a) To apportion the said trust estate (but with-

## Respondent's Exhibit A—(Continued)

out making any physical segregation or division thereof, except if and when and to the extent required to make distribution as hereinafter provided) into two (2) trust funds or portions, the one to be known as Trust Fund A, consisting of one-fourth ( $\frac{1}{4}$ th) of said trust estate, and the other to be known as Trust Fund B, consisting of three-fourths ( $\frac{3}{4}$ ths) of said trust estate;

(b) To pay and distribute the entire net income of Trust Fund A to David A. Hamburger, brother of said testator, at convenient times and, subject to instructions of this Court, at least annually during the term of his natural life;

(c) To pay and distribute the entire net income of Trust Fund B, at convenient times and, subject to instructions of this Court, at least annually, to Belle Alice Nathan, Evelyn Hamburger and Jennie H. Marx, sisters of said testator, or the survivor or survivors of them in equal shares during their respective lives; [345]

(d) In the event said David A. Hamburger shall die prior to the last survivor of said sisters of said testator, then and in that event, but only in such event Trust Fund A shall be merged in and become a part of Trust Fund B, and the entire trust estate shall thereafter be held, paid, and distributed as hereinbefore and hereinafter provided for said Trust Fund B;

(e) In the event that said David A. Hamburger shall outlive the last survivor of the said sisters of said testator, then and in that event from and after

## Respondent's Exhibit A—(Continued)

the death of said David A. Hamburger, said trustee shall pay and distribute the net income of said Trust Fund A to Florence Hamburger Bryan, described in the Will of said testator as Florence Hamburger, niece of said testator, and daughter of said David A. Hamburger, and to Arthur M. Hamburger and Howard Hamburger, nephews of said testator and sons of said David A. Hamburger until they respectively shall attain the age of forty-five years. If at the death of the last survivor of said sisters and said brother of said testator, any one or more of said children of David A. Hamburger shall have attained the age of forty-five years, the trustee shall distribute to such child or children, at the death of the said last survivor of said sisters and brother, one-third of the corpus of said Trust Fund A and such child or children shall not thereafter share in the income thereof. If any one or more of said children of David A. Hamburger shall attain the age of forty-five years after the death of the last survivor of said sisters and brother of said testator, the trustee shall distribute to such child or children if and when he shall attain the age of forty-five years (but in no event prior to the death of the last survivor of said sisters and brother) one-third of the corpus of said Trust Fund A, and such child or children shall not thereafter share in the income thereof.

(f) From and after the death of the last survivor [346] of said sisters of said testator said trustee shall pay and distribute the net income of said

## Respondent's Exhibit A—(Continued)

Trust Fund B to said Florence Hamburger Bryan and said Arthur M. Hamburger and Howard Hamburger until they respectively shall attain the age of forty-five years. If at the death of the last survivor of said sisters of said testator, any one or more of said children of David A. Hamburger shall have attained the age of forty-five years, the Trustee shall distribute to such child or children, at the death of said last survivor of said sisters, one-third of the corpus of said Trust Fund B, and such child or children shall not thereafter share in the income thereof. If any one or more of said children of David A. Hamburger shall attain the age of forty-five years after the death of the last survivor of said sisters of said Testator, the Trustee shall distribute to such child or children if and when he shall attain the age of forty-five years (but in no event prior to the death of the last survivor of said sisters), one-third of the corpus of said Trust Fund B, and such child or children shall not thereafter share in the income thereof. [347]

(g) Subject to the provisions of subparagraph (d) hereof, if said Florence Hamburger Bryan or said Arthur M. Hamburger or Howard Hamburger shall die before said David A. Hamburger, or before attaining the age of forty-five years, then and in that event said trustee upon the happening of the later of the two following contingencies: (1) the death of said David A. Hamburger, or (2) the death of such niece or nephew, shall pay and distribute a one-third (1/3rd) share of the corpus of Trust



## Respondent's Exhibit A—(Continued)

Fund A equally among the issue then living of said deceased niece, or nephew per stirpes and not per capita. If such niece or nephew shall leave no such living issue, then said trustee shall at said time pay and distribute a one-third ( $1/3$ rd) share of the corpus thereof to the other or others of said niece, Florence Hamburger Bryan, and said nephews, Arthur M. Hamburger and Howard Hamburger, or if any of them be then dead, to the issue of such niece or nephews by right by representation. If there be no such persons then living, then and in that event said trustee shall pay and distribute said corpus to the heirs at law of said Moses A. Hamburger.

(h) If either said niece, Florence Hamburger Bryan, or said nephews, Arthur M. Hamburger or Howard Hamburger, shall die before the last survivor of said sisters, or before attaining the age of forty-five years, then and in that event said trustee upon the happening of the later of the two following contingencies: (1) the death of the last survivor of said sisters, and (2) the death of such niece or nephew, shall pay and distribute a one-third ( $1/3$ rd) share of the corpus of Trust Fund B equally among the issue then living of said deceased niece or nephew per stirpes and not per capita. If such niece or nephew shall leave no such living issue, then said trustee shall at said time pay and distribute a one-third ( $1/3$ rd) share of the corpus thereof to the other or others of said niece, Florence Hamburger Bryan, and said nephews, Arthur M.

## Respondent's Exhibit A—(Continued)

Hamburger and Howard Hamburger, or if any of them be then dead, to [348] the issue of such niece or nephews by right of representation. If there be no such persons then living, then and in that event said trustee shall pay and distribute the said corpus to the heirs at law of said Moses A. Hamburger.

It Is Further Ordered, Adjudged and Decreed that said trustee in making any payments to said Arthur M. Hamburger under the terms of the foregoing provisions of this Decree of Distribution shall make all such payments only to said Arthur M. Hamburger, personally or upon his written order or receipt, but never on an order or receipt given by way of assignment, anticipation or other voluntary transfer or by operation of law by virtue of any attachment, judgment, decree or other legal proceeding against said Arthur M. Hamburger, it being the intention of said testator that the interest of said Arthur M. Hamburger under the provisions of said will should be so created that he could not alienate, transfer or assign the said interest and that the said interest should be exempt from the claims of creditors to the fullest extent permissible by law.

It Is Further Ordered, Adjudged and Decreed that said trustee in addition to the powers incidental to his office shall have the following powers and shall act under the following directions, to wit:

(a) He shall, without further order of Court, have the power to make and change investments, convert personal property into real property, and

## Respondent's Exhibit A—(Continued)

the reverse, whenever he shall think it advisable; to exchange any real estate for other real estate, and to sell at any time or times, by public auction or private sale, any property, real or personal, of which the Trust estate may at any time consist, as he shall think best, and may mortgage the same or convey it in fee or for any less estate, and no purchaser shall be required to see to the application of the purchase money of any part thereof. [349]

(b) He shall have the power to compromise or compound any debts owing to him as such trustee, or any other claims, and to adjust any disputes in relation to debts or claims by arbitration or otherwise, and to pay any debts or claims against him as trustee upon any evidence that to him shall seem sufficient in the absence of bad faith.

(c) He may apportion all extra dividends and gains from sales of unproductive real estate and his receipts and expenditures and all losses of income during alterations or improvements of real estate between income and principal, as to him seems fair and just, and any such apportionment made in good faith shall be final; he may consider and pay out all sums received as interest, as income, although the securities may have been purchased at a premium, and may charge expenses and so much of the premiums paid for the security to income or principal, as he shall deem equitable, and may, in general, use his discretion in determining the question as to what receipts and what premiums are income and principal which discretion, exercised in good faith,

## Respondent's Exhibit A—(Continued)

shall be final; provided that in the apportionment of all amounts received as dividends upon shares of the capital stock of A. Hamburger & Sons, Inc., or Hamburger Realty Company he shall be governed and controlled by the terms of this decree hereinafter contained.

(d) In any case in which said trustee is required pursuant to the provisions of this decree to divide or set apart any portion of the estate hereby distributed to him into trust funds, parts or shares, or to distribute the same, he is hereby authorized in his discretion to make such division or distribution in kind or in money, or partly in kind and partly in money, and for the purpose of such allotment the judgment of said trustee concerning the propriety thereof and the relative values for the purpose of the distribution or allotment of the securities or properties so allotted shall be binding and conclusive on all persons interested in the [350] trust estate; provided, however, that the shares of the capital stock in said A. Hamburger & Sons, Inc. and said Hamburger Realty Company and any reinvestment of trust corpus derived therefrom shall in any such allotment be made one-fourth ( $\frac{1}{4}$ th) to Trust A, and three-fourths ( $\frac{3}{4}$ ths) to Trust B, and shares of each of said two corporations transferred in pledge to secure the claim of Eleanor G. Chamberlain, shall be taken in the same proportions, to wit: one-quarter ( $\frac{1}{4}$ th) from Trust A and three-quarters ( $\frac{3}{4}$ ths) from Trust B.



## Respondent's Exhibit A—(Continued)

(e) At the risk of the trust estate and without responsibility to said trustee, said trustee may continue to hold any stocks, bonds, securities or other properties in which at the time of the death of said testator any portion of said trust estate was invested, and shall likewise have full power and authority to dispose of, call in and change any and all investments and to invest and reinvest the said trust estate.

(f) Should any company or corporation in which shares or other interests are hereby distributed to the said trustee increase its capital said trustee is hereby authorized, in his absolute discretion, to subscribe for and take up the proportion of such increased capital to which as holder of shares or other interest in such company or corporation he may be entitled and to pay for the same out of the moneys of said trust estate or in the alternative to sell such rights to such allotment. Said trustee is further authorized, if in his opinion it would be for the interests of the trust estate so to do, to subscribe for and pay for or purchase additional shares in any such company or corporation, and is further authorized, if in his discretion he considers it in the best interests of said trust estate so to do, to join in any plan for the reconstruction, reorganization or amalgamation of any such company or corporation or for the sale of the assets of any such company [351] or corporation, or any part thereof, and he may in pursuance of any such plan accept any shares or securities in lieu of or in exchange for

## Respondent's Exhibit A—(Continued)

the shares or other interest held by said trust estate in such company or corporation. Said Trustee is further authorized, if in his discretion he considers it in the best interests of said trust estate so to do, to enter into any pooling or other arrangement in connection with the interests of the trust estate in such company or corporation and in case of sale thereof to give any option he may consider advisable. In connection with the foregoing powers given to said trustee in this subparagraph (f), said trustee shall have power and authority to deal with the interests of the trust estate in any such company or corporation in which the testator was interested at the time of his death to the same extent and as fully as the testator could do if he were alive.

(g) In the event that said David A. Hamburger shall fail to qualify as trustee hereunder or shall subsequently die, resign or become disqualified, then and in that event the sisters of said testator, Belle Alice Nathan, Evelyn Hamburger and Jennie H. Marx, or the survivor or survivors of them, shall be trustees hereunder. In the event that said David A. Hamburger and said Belle Alice Nathan, Evelyn Hamburger and Jennie H. Marx shall all fail to qualify as such trustees or shall subsequently die, resign or become disqualified then and in that event the Farmers and Merchants National Bank of Los Angeles shall be sole trustee hereunder.

It Is Further Ordered, Adjudged and Decreed that said Executor has in and by his final account

## Respondent's Exhibit A—(Continued)

filed herein, as set forth in Exhibit "E" thereunto annexed, and as set forth in the Supplemental account, correctly segregated and apportioned as between principal and income all of the receipts and disbursements accruing during the administration of said estate and that the amount shown as received by said Executor as net income, to wit:

Three Hundred Ten Thousand Two Hundred Eighty One and 02/100ths [352] Dollars (\$310,281.02) is correct and is the full amount of net income received by said Executor which accrued subsequent to the death of the testator and prior to this date.

It Is Further Ordered, Adjudged and Decreed that the dividends declared and paid by A. Hamburger & Sons, Inc. and Hamburger Realty Company subsequent to October 29th, 1930, have more than exhausted the entire net profits of said corporations for the period from said date to January 1st, 1934; that with respect to all net income which should accrue subsequent to his death it was the intention of said testator, by the provision contained in said will, that the entire net income of the trust funds therein and herein designated as Trust Fund A and Trust Fund B should be paid by the trustee to certain designated persons; that in determining what portion of dividends declared and paid on stock of A. Hamburger & Sons, Inc. and Hamburger Realty Company (constituting part of the trust estate herein) to the Trustee hereunder (but not as to shares of any other corporations)

## Respondent's Exhibit A—(Continued)

constitutes income paid to the trustee for the benefit of the life tenants, the trustee would be entitled to determine that all dividends declared by either of such corporations, to the extent of the net profits before depreciation of the corporation declaring the same, earned since October 29th, 1930, constitute income, and accordingly that such portion thereof as may be paid to the trustee is paid to him for the benefit of the life tenants; but the trustee is hereby directed in determining said question to consider any and all dividends in excess of the net profits after depreciation (if any, as hereinafter defined) of any such corporation earned since October 29th, 1930, as a return of capital, and that such portion thereof as is received by the trustee is paid to him and to be held by him for the benefit of the remaindermen, except as hereinafter expressly otherwise provided, viz: [353]

1. All cash dividends declared and paid by either of said corporations, to the extent of its net profits after depreciation earned after January 1st, 1934, are to be considered as paid from income, and any of such dividends received by the trustee (to the extent that they are so considered as paid from income) should be by him paid and distributed to the persons entitled to the income from the trust estate as hereinbefore provided, subject to the provisions of subdivision 4 hereof.

2. If the Basic Amount (as that term is hereinafter defined) for the calendar year 1934, or any subsequent calendar year, shall be more than the



## Respondent's Exhibit A—(Continued)

aggregate net profits after depreciation of A. Hamburger & Sons, Inc. and Hamburger Realty Company for such calendar year, then and in that event an additional portion of the dividend declared and paid by each such corporation in the succeeding calendar year to an aggregate amount equal to such excess shall be considered as paid from income; and any such dividends (to the extent hereinbefore described) received by the trustee shall be by him paid and distributed to the persons entitled to the income from the trust estate as hereinbefore provided. Any dividends treated as paid from income solely by reason of the provisions of this subdivision 2 shall be apportioned between the dividends of said two corporations as nearly equally as possible, subject to the provisions of subdivision 3 hereof. Any dividends considered as paid from income solely by reason of the provisions of this subdivision 2 are so considered in addition to those described in subdivision 1 hereof and shall not be taken in any manner to reduce the amounts considered as paid from income under said subdivision 1.

3. Provided the aggregate amount of dividends of either of said two corporations considered as paid from income solely under the provisions of subdivision 2 hereof shall at no time and in no event exceed the difference between the aggregate net profits of such corporation before depreciation and the aggregate net profits [354] thereof after depreciation for the calendar year 1934 and all subse-

## Respondent's Exhibit A—(Continued)

quent calendar years prior to the declaration of the dividend in question.

4. Provided Further if in any calendar year subsequent to 1934 any dividends declared and paid by either of said two corporations are treated as paid from income solely by reason of the provisions of subdivision 2 hereof, and in that or any subsequent calendar year or years the aggregate net profits after depreciation of said two corporations is in excess of the Basic Amount for such calendar year or years, a portion of the cash dividends otherwise to be treated as paid from income under the provisions of subdivision 1 hereof equal in the aggregate to such excess shall be treated as a return of capital until the aggregate of the amounts so treated as a return of capital shall equal all amounts theretofore treated as paid from income solely by reason of the provisions of subdivision 2 hereof. In apportioning the amounts so to be withheld and treated as a return of capital between the cash dividends received from the said two corporations such apportionment shall be made as nearly as possible in the ratio in which cash dividends of said two corporations had theretofore been treated as paid from income solely by reason of the provisions of subdivision 2 hereof. That portion of any such cash dividend received by the trustee, which shall bear the same ratio to the total dividend so received by him as that portion of the dividend declared which is treated as a return of capital solely by reason of the provisions of this subdivision 4, bears to the

## Respondent's Exhibit A—(Continued)

entire dividend so declared, shall be by him held for the account of the remaindermen as hereinbefore provided.

5. All cash dividends other than those specified in subdivision 1 and 2 hereof, declared and paid by either of said two corporations are to be considered as constituting a return of capital and any of such dividends received by the trustee shall be by him held for the account of the remaindermen as hereinbefore provided. [355]

6. The term "net profits," as used in the foregoing subdivisions, shall be deemed to mean the net profits of said corporations legally available for dividends after deduction of depreciation (except where expressly stated to be "before depreciation") but before deduction of any amounts for amortization of rent or capitalization of rent received from any leases upon any property owned in fee by A. Hamburger & Sons, Inc. or Hamburger Realty Company, and without including in the computation of such net profits any capital gains or losses. Depreciation shall be deemed to mean that depreciation, if any, allowed by the government of the United States in computing income taxes of said corporations. Further in computing the net profits of A. Hamburger & Sons, Inc. the corporate entity of Carrie O. Sweet Corporation, its wholly owned subsidiary, should be disregarded, and net profits should be determined upon the basis of consolidated financial statements of said corporations; and dividends paid by A. Hamburger & Sons, Inc. to Carrie

## Respondent's Exhibit A—(Continued)

O. Sweet Corporation and by said Carrie O. Sweet Corporation back to A. Hamburger & Sons, Inc. should be treated as if they had always remained in A. Hamburger & Sons, Inc. Similarly the net profits of Hamburger Realty Company and its wholly owned subsidiary, N. B. Blackstone Company, should also be computed upon a consolidated basis.

7. The "Basic Amount" for any calendar year, referred to in subdivision 2 above, shall be deemed to mean an amount equal to 150% of the excess, if any, of the aggregate of the expenses of administration, fees, and all other charges of the trust estate, chargeable against the income thereof, as shown in any reports of the trustee approved by this court during such calendar year, over the income of said trust estate (other than income received by way of dividends from A. Hamburger & Sons, Inc. and Hamburger Realty Company), as shown by such reports; plus an additional amount determined as follows: [356]

(a) If Jennie H. Marx, Belle Alice Nathan, Evelyn Hamburger and David A. Hamburger (said persons being hereinafter sometimes referred to as "life tenants") are all alive on the last day of such calendar year ..... \$418,682.00

(b) If only three of said life tenants, no one of whom is David A. Hamburger, are alive on the last day of such calendar year..... 367,521.00



Respondent's Exhibit A—(Continued)

(c) If only three of said life tenants, one being David A. Hamburger, are alive on the last day of such calendar year .....\$ 346,361.00

(d) If only two of said life tenants, neither of whom is David A. Hamburger, are alive on the last day of such calendar year..... 295,341.00

(e) If only two of said life tenants, one being David A. Hamburger, are alive on the last day of such calendar year..... 228,134.00

(f) If only one of said life tenants, not being David A. Hamburger, is alive on the last day of such calendar year..... 185,844.00

(g) In all other cases there shall be no Basic Amount.

That any discretion vested in the trustee under the terms of this decree in apportioning receipts to income or principal is subject to and controlled by such stipulation and this decree and said trustee should be and he is hereby ordered and directed to [357] keep his accounts as such trustee and make distribution of the receipts of the trust estate accordingly.

It Is Further Ordered, Adjudged and Decreed that the residue of the estate of said testator hereinabove referred to and hereinabove distributed to said trustee consists of all of the following de-

## Respondent's Exhibit A—(Continued)

scribed real and personal property, together with any and all other property not now known or discovered belonging to said testator at the time of his death or in which said testator at said time had any right, title or interest or in which the estate of said testator has since his death acquired any right, title or interest, to wit:

Emporium Capwell Co. bonds due October 1, 1942—bearing interest at  $5\frac{1}{2}\%$ , payable semi-annually, bearing Nos. M6467, M5475, M5466, M5469, M5468, M5470, M5471, M5472, M5473, M5447, M5474, M5476, each in the sum of \$1000 and D627 for the sum of \$500.00.

Yosemite Park & Curry Co. stock Cert. No. C-78 for 771 shares of common capital stock. Yosemite Park & Curry Co. bonds, 6% interest, due January 1, 1934—Certificates Nos. AM-250, AM-251, AM-262 for \$1000 each; and No. A1-38 for \$50.

Metropolitan Mortgage Company  $6\frac{1}{2}\%$  bond due July 1, 1936, interest payable semi-annually, Certificate No. M-7 in the sum of \$1000.00.

Los Angeles Chamber of Commerce bonds, due Feb. 7, 1943, bearing 5% interest, payable semi-annually, Certificates Nos. 1896 and 1897 for \$1000 each and one-half interest in Certificate No. 1898 for \$1000.

Montana Power Co., bonds, due July 1, 1943, bearing interest at 5%, payable semi-annually,

## Respondent's Exhibit A—(Continued)

Certificates Nos. M9630, M11539 and M11540 in the sum of \$1000 each.

Chicago City Railway Co. bond 5% interest Certificate of Deposit No. 4440 issued by First Trust & Savings Bank for bond No. 24946.

Miley Petroleum Co., Ltd. bonds due August 13, 1934, bearing interest at 6% payable semi-annually—Certificate No. 407 for \$500 and No. 1550 for \$1000.

Broadway Department Store—Certif. No. CL2/0 for 25 shares of common and C1-2 for 100 shares of common; Certif. No. AL128 for 100 shares of first preferred and No. A1 1467 for 25 shares of first preferred, both bearing interest at 7%. [358]

Santa Barbara Biltmore Corpn. stock—Certificate No. 80 for 20 shares and Certificate No. 129 for 30 shares of 8% preferred; Certificate No. 95 for 10 shares and Certificate No. 143 for 15 shares of common.

Farm Lands Company—Certificate Nos. 127 for 40 shares, No. 164 for 30 shares and No. 207 for 20 shares of capital stock.

Union Oil Company of California stock—LA/0 41375 for 5 shares; LA/0 51482 for 5 shares; LA/0 56848 for 5 shares; LA/0 62246 for 5 shares; NY47359; NY47363; NY47362; NY-47361; and NY47360; each for 100 shares; all being for common stock.

## Respondent's Exhibit A—(Continued)

Cross Land Company—Certificate No. 156 for 50 shares of capital stock.

Texas Corporation—Certificates Nos. 223393 and 223394 for 100 shares each and No. 0477531 for 50 shares of capital stock.

May Department Stores Company—Certificates Nos. 34264 and 34265 for 100 shares each and No. 046344 for 29 shares of common stock.

International Telephone and Telegraph Co.—NN195912 and NN195913 for 100 shares each and NN-F503677 for 50 shares of common stock.

Equitable Realty Company stock, par value \$100 per share—Certificate No. 68 for 80 shares; No. 38 for 100 shares; No. 50 for 200 shares and No. 1 for 500 shares of preferred stock.

Westgate Building Corporation—bond—Certificate No. 663 for \$500 due January 1, 1946, bearing 6%. Deposit receipt #28157 dated January 30, 1932 signed by Bank of America. 200 Sunset Canyon Country Club \$30.00 8% bonds Nos. 4049 to 4248, inclusive.

1 Membership San Gabriel Country Club, Certificate No. 137.

1 Membership Deauville Beach Club (Founders Life).

A. Hamburger & Sons, Inc. capital stock Certificate No. 46 for 1143.366 shares; and one-half interest in and to Certificate No. 17 for 200 shares, and Certificate No. 9 for 10 shares.



## Respondent's Exhibit A—(Continued)

Hamburger Realty Company capital stock Certificate No. 43 for 291.666 shares.

Lots 143 and 144, Tract 6330, as per map recorded in Book 69 of Maps at pages 33, 34, 35, 36 and 37 in the office of the County Recorder of Los Angeles County, being property situated in the City of Santa Monica, County of Los Angeles. [359]

Lot 6, Tract 5663, City of Los Angeles, County of Los Angeles, as per map recorded in Book 61, page 87 of maps, in the office of the County Recorder of said County.

Lot 7, Block 1, La Paloma Tract, Hollywood, in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 5, page 80 of Maps, in the office of the County Recorder of Los Angeles County.

Furniture in apartment house located on Lot 7, Block 1, La Paloma Tract, City of Los Angeles.

Lot 413, Tract 8498, City of Los Angeles, County of Los Angeles, as per map recorded in Book 95, pages 53 to 55 inclusive of Maps, in the office of the County Recorder of Los Angeles County.

Lot 4, Tract 3819, City of Los Angeles, County of Los Angeles, as per map recorded in Book 42, page 36 of Maps, in the office of the County Recorder of said County.

Undivided 5/144ths interest in and to Lots 1 and 2 in Block "C" of the Morris Vineyard

## Respondent's Exhibit A—(Continued)

Subdivision, as per map recorded in Book 3, Pages 38 and 39 of Miscellaneous Records in the County of Los Angeles.

Undivided  $\frac{8}{30}$ ths interest in and to the following described property, lying and being in the City of Los Angeles, County of Los Angeles, described as follows: The Northeasterly 70 feet of Lots 22 and 24 in Block "A" of the Morris Vineyard Subdivision, as per map recorded in Book 3, pages 38 and 39 of Miscellaneous Records of said County, being 1402 South Hill Street; 70 feet on Hill Street and 102 feet on Fourteenth Street, described as follows: Beginning at the intersection of Hill Street and Fourteenth Street at point at Northwest corner of Lot 24; thence Easterly along the northerly line of Lots 22 and 24, 102 feet to the Northeasterly corner of Lot 22; thence Southwesterly 70 feet along the easterly line of Lot 22; thence West 102 feet parallel with the north line of said Lots 22 and 24 to a point on the Easterly line of Hill Street 70 feet from the point of beginning; thence NEly along Wly line of Lot 24, 70 feet to beginning.

Undivided one-half interest in South 45 feet of the North 48 feet of Lot 5 of H. F. Spencer's Subdivision of the North half of Block 69 of Ord's Survey in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 5, Page 62 of Miscellaneous Records of Los Angeles County.

## Respondent's Exhibit A—(Continued)

Lots 55, 56, and 57, Tract 6659, City of and County of Los Angeles, as per map recorded in Book 72, Pages 64 and 65 of Maps in the office of the County Recorder of said Los Angeles County.

Undivided one-half interest in that portion of Block 77 of Ord's Survey, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 53, page 66, Miscellaneous Records of said [360] County, described as follows: Beginning at the intersection of the Southeasterly line of said Block 77 with the southeasterly prolongation of the Southwesterly line of Tract No. 3246, as per map recorded in Book 35, page 46 of Maps, in the office of the County Recorder of said County, said point being distant Southwesterly 379.16 feet from the most easterly corner of said Block 77 in the southwesterly line of Eleventh Street; thence southwesterly along the southwesterly line of said Block 48.56 feet to the agreement line established between the land of Consolidated Realty Company and H. C. Fryman, by deed recorded in Book 2691, page 237 of Official Records of said County; thence along said agreement line northwesterly parallel with said Eleventh Street, 164.58 feet, more or less, to the north and south center line of said block; thence Northeasterly along said center line, 48.56 feet to the southwesterly line of said Tract No. 3246; thence southeasterly along said southwesterly line and its prolonga-

## Respondent's Exhibit A—(Continued)

tion 164.70 feet, more or less, to the point of beginning; except the southeasterly six feet of said land in Hill Street as widened.

Undivided one-half interest in Lot 1 and the North half of the Northwest quarter of Section 29, Township 18 South, Range 1 West, S.B.B. & M., being in San Diego County, State of California.

Undivided one-half interest in East half of Lot 108, Lankershim Ranch Land & Water Company's subdivision of the East 12,000 acres of the South Half of Rancho Ex-Mission of San Fernando, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 31, page 39 of Maps in the office of the County Recorder of Los Angeles County, Except therefrom that portion of the Easterly half of said Lot One Hundred Eight (108) lying Southwesterly of the following described line; Beginning at a point in the Southerly line of said Lot, distant thereon one hundred fifty (150) feet Westerly from the Southeasterly corner of said lot, said corner being a point in the Westerly line of Laurel Canyon Boulevard; thence Northwest-erly in a direct line to a point in a line parallel with and distant six hundred forty-seven and fifty-hundredths (647.50) feet Easterly from the Westerly line of said lot, distant on said parallel line six hundred forty-seven and fifty hundredths (647.50) feet Northerly from the Southerly line of said lot.



## Respondent's Exhibit A—(Continued)

It Is Further Orderer, Adjudged and Decreed that David A. Hamburger, Belle Alice Nathan, Evelyn Hamburger and Jennie H. Marx are entitled to receive in equal shares the entire net income of the estate accruing during administration, to wit, the sum of Three Hundred Ten Thousand Two Hundred Eighty-One and 02/100ths Dollars (\$310,281.02), and in addition to the real and personal property hereinabove described there is hereby distributed to said trustee the said sum of Three Hundred Ten Thousand Two Hundred Eighty-One and [361] 02/100ths Dollars (\$310,281.02), which said trustee is hereby authorized and empowered and directed to pay in equal shares to said David A. Hamburger, Belle Alice Nathan, Evelyn Hamburger and Jennie H. Marx.

It Is Further Ordered, Adjudged and Decreed that in and by a certain written contract, dated May 1, 1924, W. E. Chamberlain and Eleanor G. Chamberlain, as first parties, agreed to sell and the decedent and David A. Hamburger Corporation agreed to buy two hundred and ten (210) shares of the capital stock of A. Hamburger & Sons, Inc. and that in and by the said agreement the said decedent and said David A. Hamburger Corporation are jointly and severally liable for the payment of the purchase price of said stock, and that although the claim of Eleanor G. Chamberlain, the survivor of said first parties, has been allowed against the estate of the decedent for the full amount of the unpaid balance of the purchase price,

## Respondent's Exhibit A—(Continued)

said estate is entitled to have reimbursed to it, and the trustee, under the will of said decedent, will be entitled to have reimbursed to him by said David A. Hamburger Corporation any and all amounts paid out on said claim in excess of one-half of the amount for which said claim has been allowed. That said contract also provides that A. Hamburger & Sons, Inc., as third party thereto, shall pay to the first parties the sum of \$1326.28 per month from the 1st day of January, 1924, to December 31, 1942, and that it was the intention and understanding of all of the parties to said contract that said amount so paid by said third party should be paid for the use and benefit of the second parties, and that upon payment thereof the said third party should charge one-half of the amount so paid to the account of the decedent and one-half of such amount to David A. Hamburger Corporation, and that ever since the execution of said contract monthly installments in said amount have been paid by said third party and the amounts so paid out have been so charged to the account of the second parties and that said trustee should be and he is hereby authorized and empowered to pay out of the corpus of said trust estate to said A. Hamburger & Sons, Inc. one-half of the amounts which may be so paid by said A. Hamburger & Sons, Inc. upon the purchase price of said stock.

It Is Further Ordered, Adjudged and Decreed that there is unpaid upon the claim of W. E. Chamberlain and Eleanor G. Chamberlain heretofore

## Respondent's Exhibit A—(Continued)

allowed by the Executor of the Last Will and Testament [363] of said deceased, and approved by the Court, the sum of One Hundred Ten Thousand Seven Hundred Seventeen and  $76/100$  Dollars (\$110,717.76) after deducting all payments made to and including the 1st day of December, 1934. That such sum is payable in monthly installments of One Thousand One Hundred Fifty-three and  $31/100$  Dollars (\$1153.31) on the first day of each calendar month, commencing with January 1, 1935, and that Eleanor G. Chamberlain is now the sole owner of said claim and entitled to receive payment of the full amount unpaid thereon. That payment of said amount shall be made from the residue of the estate hereinabove distributed to David A. Hamburger as trustee, and said trustee and his successor or successors in office are charged with the duty of and are hereby ordered and directed to pay the amount of said claim now unpaid in installments, as above set forth, out of the residue of said estate so distributed.

It Is Further Ordered, Adjudged and Decreed that all of the real and personal property constituting the residue of said estate, distributed to said trustee, shall be distributed subject to a general lien or charge in favor of Eleanor G. Chamberlain for the unpaid amount of her claim against said estate, and the said lien or charge shall continue upon all of the principal or corpus of said trust estate, whether the same consists of real, personal and/or mixed property, but not upon the income

## Respondent's Exhibit A—(Continued)

therefrom, until such time as said claim has been fully paid and discharged.

In addition thereto, and as further security for the payment of said claim and each instalment thereof, said trustee, upon the entering of said decree, is hereby ordered and directed to have issued to said Eleanor G. Chamberlain as pledgee, and to deliver to her a certificate for five hundred (500) shares of the capital stock of A. Hamburger & Sons, Inc., and a certificate for one hundred and fifty (150) shares of the capital stock of Hamburger Realty Company, and that said Eleanor G. Chamberlain shall have [364] and exercise all the rights of a pledgee with respect to said stock, including the right to exercise, upon failure of the trustee to pay any and all installments of said claim when due, any and all rights of a pledgee of corporate stock upon default in the performance of the obligations secured thereby; provided, however, that so long as installments coming due on said claim are paid when due, the trustee and his successor or successors in office shall be entitled to receive and retain all cash dividends legally paid out of either earnings or surplus by either of said corporations upon said shares.

It Is Further Ordered, Adjudged and Decreed that with respect to all of the real and personal property constituting the residue of said estate herein and hereby distributed to said trustee, other than such shares of capital stock of said corporations, said trustee and his successor or successors



## Respondent's Exhibit A—(Continued)

in office shall have and may exercise all the rights, powers and duties herein specified and given as fully as if said lien did not exist, but any and all property or assets constituting corpus or principal of said trust estate which shall come into the hands of said trustee as the result of the exercise of any such rights or powers shall be subject to the lien hereinbefore declared. The trustee may use, distribute and pay over all of the income from said trust estate in the manner and to the parties entitled thereto under the provisions of this decree of distribution, and may, subject to said lien which shall continue in full force and effect until the claim of Eleanor G. Chamberlain shall have been fully paid and discharged, distribute and pay over to any party entitled thereto under the terms of this decree of distribution any portion of the principal or corpus of the trust estate.

It Is Further Ordered, Adjudged and Decreed that all payments due said Eleanor G. Chamberlain upon her said claim heretofore filed and allowed herein up to and including the 1st day of October, 1935, have been paid in full.

It Is Further Ordered, Adjudged and Decreed that all payment [365] due to Alexina Beam upon her claim heretofore, filed in this Court up to and including the 29th day of September, 1935, have been paid in full. That there is payable on such claim the sum of Two Hundred Eight and 34/100 Dollars (\$208.34) on the twenty-ninth day of each and every calendar month, commencing with the

## Respondent's Exhibit A—(Continued)

29th day of October, 1935, and continuing during the lifetime of said claimant. That payment of said amount shall be made from the residue of the estate hereinabove distributed to David A. Hamburger as trustee, and said trustee and his successor or successors in interest are charged with the duty of and are hereby ordered and directed to pay the amount of said claim in monthly payments as above set forth out of the residue of said estate so distributed.

It Is Further Ordered, Adjudged and Decreed that all of the real and personal property constituting the residue of the estate distributed to said trustee, excepting the shares of stock hereinabove described which the trustee is hereinabove ordered and directed to transfer to Eleanor G. Chamberlain as pledgee, shall be distributed subject to a general lien or charge in favor of Alexina Beam for the amount of her claim against the said estate, and that the said lien or charge shall continue upon all of the principal or corpus of said trust estate, whether the same consists of real, personal and/or mixed property, but not upon the income therefrom until such time as the said claim has been fully paid and discharged.

It Is Further Ordered, Adjudged and Decreed that with respect to all of the real and personal property constituting the residue of said estate herein and hereby distributed to said trustee, other than the shares of stock referred to in the preceding paragraph, said trustee and his successor or suc-

## Respondent's Exhibit A—(Continued)

cessors in office shall have and may exercise all of the rights, powers and duties herein specified and given as fully as if said lien did not exist, but any and all property or assets constituting corpus or principal of said trust estate which shall come into the hands of said trustee as the result of the exercise of [366] any such rights or powers shall be subject to the lien hereinbefore declared. The trustee may use, distribute and pay over all of the income from said trust estate in the manner and to the parties entitled thereto under the provisions of this decree of distribution, and may, subject to said lien which shall continue in full force and effect until the claim of Alexina Beam has been fully paid and discharged, distribute and pay over to any party entitled thereto under the terms of this decree of distribution any portion of the principal or corpus of the trust estate.

It Is Further Ordered, Adjudged and Decreed that the trustee shall pay said obligations in favor of said Eleanor G. Chamberlain and said Alexina Beam out of the corpus of said trust estate.

It Is Further Ordered, Adjudged and Decreed that A. Hamburger & Sons, Inc., a corporation, is now the owner and holder of a certain promissory note for the sum of Four Hundred Nine Thousand One Hundred Eighty Six and 14/100ths Dollars (\$409,186.14), bearing date October 3, 1935, executed by D. A. Hamburger as Executor of the Last Will and Testament of M. A. Hamburger, deceased, and payable on or before five (5) years after date,

## Respondent's Exhibit A—(Continued)

with interest at two per cent (2%) per annum, payable annually. That payment of said amount shall be made from the residue of the estate hereinabove distributed to David A. Hamburger, as trustee, and that said trustee and his successor or successors in office are charged with the duty of, and are hereby ordered and directed to pay the amount of said note according to its terms as above set forth out of the residue of said estate so distributed.

It Is Further Ordered, Adjudged and Decreed that all of the real and personal property constituting the residue of the estate distributed to said trustee, excepting the shares of stock hereinabove described, which the trustee is hereinabove ordered and directed to transfer to Eleanor G. Chamberlain, as pledgee, [367] shall be distributed subject to a general lien or charge in favor of A. Hamburger & Sons, Inc. for the amount of said promissory note and that the principal of said promissory note shall be and remain a charge or lien upon all of the principal or corpus of said trust estate, but not upon the income therefrom, until such time as the principal of said note has been fully paid and discharged, and that the principal of said note shall be paid out of the corpus of the trust estate and the interest falling due upon said promissory note shall be paid from the income of said trust estate.

It Is Further Ordered, Adjudged and Decreed that with respect to all of the real and personal property constituting the residue of said estate herein and hereby distributed to said trustee, other



## Respondent's Exhibit A—(Continued)

than the shares of stock referred to in the preceding paragraph, said trustee and his successor or successors in office shall have and may exercise all of the rights, powers and duties herein specified and given, as fully as if said lien in favor of A. Hamburger & Sons, Inc. did not exist, but any and all property and assets constituting corpus or principal of said estate, which shall come into the hands of said trustee as the result of the exercise of any of such rights or powers, shall be subject to the lien hereinbefore declared. The trustee may use, distribute and pay over all of the income from said trust estate in the manner and to the parties entitled thereto under this decree of distribution and may, subject to said lien which shall continue in full force and effect until said promissory note has been paid and discharged, distribute and pay over to any party, entitled thereto under the terms of this decree of distribution, any portion of the principal or corpus of this trust estate.

It Is Further Ordered, Adjudged and Decreed that the general lien hereinbefore described in favor of said Eleanor G. Chamberlain, and the lien hereinbefore described in favor of said Alexina Beam, and the lien hereinbefore described in favor of said [368] A. Hamburger & Sons, Inc. shall be and each of said liens is hereby declared to be equal in time and equal in right and of like force and effect, and that whenever necessary to make any payments due upon any of said obligations of said trust estate, any part of the corpus or principal of said trust



## Respondent's Exhibit A—(Continued)

estate, except said shares of stock to be pledged to said Eleanor G. Chamberlain, may be used or may be converted or encumbered for such purpose, and the proceeds be used for the purpose of making such payments without any requirement that any amount of corpus so used, converted or encumbered be paid upon either of the other of said liens; provided, however, that the lien to secure the claim of said Eleanor G. Chamberlain and the claim of Alexina Beam, and the obligation to said A. Hamburger & Sons, Inc., together with the obligation to pay the same, are imposed and shall be maintained by the trustee in the proportion of one-fourth ( $\frac{1}{4}$ th) on the corpus of Trust A and three-quarters ( $\frac{3}{4}$ ths) on the corpus of Trust B.

It Is Further Ordered, Adjudged and Decreed that said Executor has retained and has in his hands funds belonging to the estate of said deceased in the sum of Twenty One Thousand Two Hundred Ninety One and  $\frac{62}{100}$ ths Dollars (\$21,291.62), which said amount has been retained by said Executor for the purpose of paying and discharging any and all income taxes due the United States of America accruing during the administration of said estate, and said Executor is hereby ordered and directed, after application of said funds has been made to the payment of said income tax and any other expenses incidental to the closing of the estate of said deceased, to account to and pay over to the trustee any residue or remainder of said

## Respondent's Exhibit A—(Continued)

sum that may remain in his hands unexpended, and that should the account so retained by said Executor be insufficient to fully pay and discharge any and all taxes hereafter levied or assessed against any income of said estate received during administration, the said trustee or his successor or successors in office [369] are hereby authorized, directed and ordered to pay any unpaid balance of said taxes out of the corpus and income of said trust estate in the following proportions: one-fourth out of the corpus of said trust estate and three-fourths out of the income of said trust estate; that any residue of the amount so retained by the Executor shall, upon the receipt thereof by the trustee, be credited one-fourth to principal of the trust estate and three-fourths to income of said trust estate.

Dated this 4th day of October, 1935.

ARTHUR KEETCH,  
Judge.

O. K.

C. Brown

Consented to and approved as to form.

FLINT & MacKAY,  
By WESLEY L. NUTTEN, JR.,  
Attorneys for Eleanor G.  
Chamberlain.

## RESPONDENT'S EXHIBIT C

Los Angeles, California, January 1, 1938.  
\$673,578.90

For value received, the undersigned promises to pay to A. Hamburger & Sons, Inc., a California corporation, or order, at the main office of Union Bank & Trust Co. of Los Angeles, in the City of Los Angeles, California, the sum of \$673,578.90 in installments as follows:

On or before March 10th of each of the years 1939 to 1943 (both inclusive), the sum of \$30,000.00; and

On or before March 10th of each of the years 1944 to 1967 (both inclusive), unless the entire principal of the indebtedness evidenced hereby shall have been sooner paid, the sum of \$20,000.00; and

On or before March 10th, 1968, the entire unpaid principal balance of the indebtedness evidenced hereby.

All unpaid balances of said indebtedness shall bear interest at the rate of two per cent (2%) per annum, payable on March 10, 1939, and annually thereafter. The undersigned shall have the right at any time or times and from time to time to prepay any or all of said installments.

If the total amount of all "ordinary," "supplementary," and "additional" dividends (as those terms are now defined in the By-Laws of A. Hamburger & Sons, Inc., and Hamburger Realty Company) declared and paid by said two corporations in the twelve-month period immediately preceding the due date of any of such installments to and in-

cluding March 10, 1943, shall be less than \$420,000.00, such installment shall be reduced by a sum equal to 31% of such deficiency.

If the total amount of such "ordinary," "supplementary" and "additional" dividends declared and paid by [371] said two corporations in the twelve-month period immediately preceding the due date of any such installments after March 10, 1943, to and including March 10, 1967, shall be less than \$250,000.00, such installment shall be reduced by a sum equal to 31% of such deficiency.

If, in any such twelve-month period the total amount of such "ordinary," "supplementary," and "additional" dividends declared and paid by said two corporations shall exceed the sum fixed above (\$420,000.00 or \$250,000.00), as the case may be, the installment due at the end of such period shall be increased by a sum equal to 31% of such excess, but in no event more than the total amount of all outstanding reductions theretofore effected pursuant to the foregoing provisions hereof.

The undersigned further agrees to pay on account of said principal, to apply on the latest maturing installments then unpaid, a sum equal to 31% of all dividends, other than "ordinary," "supplementary," and "additional" dividends, hereafter declared and paid by A. Hamburger & Sons, Inc.

If hereafter Article XX of the By-Laws of A. Hamburger & Sons, Inc., or Hamburger Realty Company shall be amended or repealed or shall terminate by its terms, any dividends thereafter de-

clared and paid by such corporations shall, for the purpose of computing the payments due hereunder, be deemed to be an "ordinary," "supplementary" or "additional" dividend to the extent that they would have been such had such By-Law remained [372] in full force and effect.

In case suit is instituted to collect this note, or any portion thereof, the undersigned further promises to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit.

This is a renewal note, given in renewal of the promissory note of the undersigned in favor of the above-named payee, identical in amount with this note, but dated January 27, 1937.

If default be made in the payment of any sums due hereunder the holder hereof may, at its option, give written notice to the undersigned (served upon it in the manner provided by law for service of summons) of such default, and of its option to declare the entire unpaid balance of the indebtedness evidenced hereby immediately due and payable; and if payment of such sums be not made within ninety (90) days after the giving of such notice, said entire indebtedness shall, at the expiration of such time, become immediately due and payable.

The undersigned is the owner of 993.366 shares of the capital stock of A. Hamburger & Sons, Inc., represented by Certificate No. 61. The undersigned agrees that A. Hamburger & Sons, Inc., has and shall have a lien for the securing of the indebtedness evidenced hereby upon all of the right, title



and interest of the undersigned in or to the shares of stock of A. Hamburger & Sons, Inc., represented by said Certificate No. 61 and now owned by the undersigned as aforesaid; and further agrees that said A. Hamburger & Sons, Inc., may apply any dividends hereafter declared by it, and payable upon any of such shares, to the payment of any sums then due and payable hereunder. [373]

The undersigned agrees to permit A. Hamburger & Sons, Inc., to make appropriate endorsement referring to this agreement upon the certificates representing said shares. Said endorsement may be in substantially the following form:

“The shares represented by this stock are subject to a lien in favor of the issuing corporation as provided in a promissory note of the holder of said shares dated January 1, 1938. As provided in said note, the issuing corporation has the right to apply dividends payable on the stock represented hereby to the payment of the indebtedness evidenced by said note; and may refuse to permit any transfer of said shares on its books until said indebtedness shall have been fully paid, when the transferee shall give his written consent that such transfer is made subject to the terms of said agreement, including the right to apply dividends to the payment of said indebtedness. For further terms of said lien and agreement reference is made to said promissory note.”

The undersigned further agrees that A. Hamburger & Sons, Inc., may, in its discretion, refuse to permit any transfer upon its books of any or all of the aforementioned shares of stock until after the entire indebtedness evidenced hereby shall have been paid, unless the transferee shall give his written consent that such transfer is made subject to all of the provisions of this agreement, including the right to apply dividends to the payment of the indebtedness secured hereby, as hereinbefore provided, and also including the application of this provision to any future transfers [374] of said shares.

No transferee of said stock shall, however, be personally liable for the payment of the indebtedness evidenced hereby unless he expressly assumes and agrees to pay the same.

Nothing herein contained shall be deemed to in anywise modify the obligation of A. Hamburger & Sons, Inc., and Hamburger Realty Company, or either of them, or of the members of the respective boards of directors to make and distribute dividends as provided by Article XX of the By-Laws hereinabove referred to of each of said corporations.

For the further securing of the indebtedness evidenced hereby, the undersigned has delivered to Union Bank & Trust Co. of Los Angeles the certificate representing the shares of stock aforesaid. In the event of any default by the undersigned in the making of any of the payments herein provided, A. Hamburger & Sons, Inc., is authorized to demand delivery of said certificate to it; and

upon such delivery shall hold said certificate and the shares evidenced thereby in pledge for the further security hereof.

In Witness Whereof, the undersigned has executed this instrument as of January 1, 1938.

DAVID A. HAMBURGER  
CORPORATION.

/s/ By D. A. HAMBURGER,

President,

and

/s/ K. F. HAMBURGER,

Secretary. [375]

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RESPONDENT'S EXHIBIT D

Los Angeles, California, January 1, 1938.

\$66,027.85.

For value received, the undersigned promises to pay to A. Hamburger & Sons, Inc., a California corporation, or order, at the main office of Union Bank & Trust Co. of Los Angeles, in the City of Los Angeles, California, the sum of \$66,027.85 in installments as follows:

On or before March 10, 1945 the sum of \$231.00;

On or before March 10th of each of the years 1946 to 1967 (both inclusive) unless the entire principal of the indebtedness evidenced hereby shall have been sooner paid, the sum of \$2,860.00; and

On or before March 10, 1968, the entire unpaid principal balance of the indebtedness evidenced hereby.

All unpaid balances of said indebtedness shall bear interest at the rate of two per cent (2%) per annum, payable on March 10, 1939, and annually thereafter. The undersigned shall have the right at any time or times and from time to time to prepay any or all of said installments.

If the total amount of such "ordinary," "supplementary" and "additional" dividends declared and paid by said two corporations in the twelve-month period immediately preceding the due date of any of such installments to and including March 10, 1967, shall be less than \$250,000.00, such installment shall be reduced by a sum equal to 11% of such deficiency.

If, in any such twelve-month period the total amount of such "ordinary," "supplementary," and "additional" dividends declared and paid by said two corporations shall exceed the sum of \$250,000.00, the installment due at the end of such period shall be increased by a sum equal to 11% of such excess, but in no event more than the total [376] amount of all outstanding reductions theretofore effected pursuant to the foregoing provisions hereof.

The undersigned further agrees to pay on account of said principal, to apply on the latest maturing installments then unpaid, a sum equal to 11% of all dividends, other than "ordinary," "supplementary," and "additional" dividends, hereafter declared and paid by A. Hamburger & Sons, Inc.

If hereafter Article XX of the By-Laws of A. Hamburger & Sons, Inc., or Hamburger Realty Company shall be amended or repealed or shall ter-

minate by its terms, any dividends thereafter declared and paid by such corporations shall, for the purpose of computing the payments due hereunder, be deemed to be an "ordinary," "supplementary" or "additional" dividend to the extent they would have been such had such By-Law remained in full force and effect.

In case suit is instituted to collect this note, or any portion thereof, the undersigned further promises to pay such additional sum as the court may adjudge reasonable as attorney's fees in such suit.

This note and a note of like date for \$19,789.29 in favor of the above-named payee are given in substitution of a renewal note dated January 1, 1938, for \$85,817.14 given in renewal of two promissory notes in favor of the above named payee, both dated January 27, 1937, one of which notes was signed by the undersigned alone, and the other of which was signed by the undersigned, Jennie H. Marx and Evelyn Hamburger. This note is for the renewal of the note signed by the undersigned alone, and the note for \$19,789.29 executed concurrently herewith is in renewal of one-third of the amount of the note signed by the undersigned, [377] Jennie H. Marx, and Evelyn Hamburger.

If default be made in the payment of any sums due hereunder, the holder hereof may, at its option, give written notice to the undersigned (served upon her in the manner provided by law for service of summons) of such default, and of its option to declare the entire unpaid balance of the indebtedness



evidenced hereby immediately due and payable; and if payment of such sums be not made within ninety (90) days after the giving of such notice, said entire indebtedness shall, at the expiration of such time, become immediately due and payable.

The undersigned is the owner of 131 shares of the capital stock of A. Hamburger & Sons, Inc., represented by Certificate No. 55. The undersigned agrees that A. Hamburger & Sons, Inc., has and shall have a lien for the securing of the indebtedness evidenced hereby and the indebtedness evidenced by said note for \$19,789.29 upon all of the right, title and interest of the undersigned in or to the shares of stock of A. Hamburger & Sons, Inc., represented by said Certificate No. 55 and now owned by the undersigned as aforesaid; and further agrees that said A. Hamburger & Sons, Inc., may apply any dividends hereafter declared by it, and payable upon any of such shares, to the payment of any sums then due and payable hereunder or under said note for \$19,789.29.

The undersigned agrees to permit A. Hamburger & Sons, Inc., to make appropriate endorsement referring to this note and to said note for \$19,789.29 upon the certificate representing said shares. Said endorsement may be in substantially the following form:

“The shares represented by this certificate are subject to a lien in favor of the issuing [378] corporation as provided in two promissory notes of the holder of said shares dated January 1,

1938. As provided in said notes, the issuing corporation has the right to apply dividends payable on the stock represented hereby to the payment of the indebtednesses evidenced by said notes; and may refuse to permit any transfer of said shares on its books until said indebtednesses shall have been fully paid, unless the transferee shall give his written consent that such transfer is made subject to the terms of said note, including the right to apply dividends to the payment of said indebtednesses. For further terms of said lien and agreement reference is made to said promissory notes and the pledge agreement securing the same."

The undersigned further agrees that A. Hamburger & Sons, Inc., may, in its discretion, refuse to permit any transfer upon its books of any or all of the aforementioned shares of stock until after the entire indebtednesses evidenced hereby and by said note for \$19,789.29 shall have been paid, unless the transferee shall give his written consent that such transfer is made subject to all of the provisions of this note and of said note for \$19,789.29, including the right to apply dividends to the payment of the indebtednesses secured hereby and by said note for \$19,789.29, as hereinbefore provided, and also including the application of this provision and of the similar provision contained in said note for \$19,789.29 to any future transfers of said shares.

No transferee of said stock shall, however, be personally liable for the payment of the indebted-

ness evidenced hereby unless he expressly assumes and agrees to pay the same.

Nothing herein contained shall be deemed to in anywise modify the obligation of A. Hamburger & Sons, Inc., and Hamburger Realty Company, or either of them, or of the members of the respective boards of directors to make and distribute dividends as provided by Article XX of the By-Laws hereinabove referred to of each of said corporations.

For the further securing of the indebtedness evidenced hereby and by said note for \$19,789.29, the undersigned has delivered to Union Bank & Trust Co. of Los Angeles the certificate representing the shares of stock aforesaid. In the event of any default by the undersigned in the making of any of the payments herein provided or provided in said note for \$19,789.29, A. Hamburger & Sons, Inc., is authorized to demand delivery of said certificate to it; and upon such delivery shall hold said certificate and the shares evidenced thereby in pledge for the further security hereof and for said note for \$19,789.29.

In Witness Whereof, the undersigned has executed this instrument as of January 1, 1938.

/s/ BELLE A. H. NATHAN.

wab:eg

12/22/38 [380]

## RESPONDENT'S EXHIBIT E

Los Angeles, California, January 1, 1938.

\$150,899.40

For value received, the undersigned promises to pay to A. Hamburger & Sons, Inc., a California corporation, or order, at the main office of Union Bank & Trust Co. of Los Angeles, in the City of Los Angeles, California, the sum of \$150,899.40 in installments as follows:

On or before March 10th, 1942, the sum of \$2,966.71;

On or before March 10th of each of the years 1943 to 1967 (both inclusive), unless the entire principal of the indebtedness evidenced hereby shall have been sooner paid, the sum of \$5,689.00; and

On or before March 10th, 1968, the entire unpaid principal balance of the indebtedness evidenced hereby.

All unpaid balances of said indebtedness shall bear interest at the rate of two per cent (2%) per annum, payable on March 10, 1939, and annually thereafter. The undersigned shall have the right at any time or times and from time to time to prepay any or all of said installments.

If the total amount of all "ordinary," "supplementary," and "additional" dividends (as those terms are now defined in the By-Laws of A. Hamburger & Sons, Inc., and Hamburger Realty Company) declared and paid by said two corporations in the twelve-month period immediately preceding the due date of any of such installments to and in-



cluding March 10, 1943, shall be less than \$420,000.00, such installment shall be reduced by a sum equal to eleven per cent (11%) of such deficiency.

If the total amount of such "ordinary," "supplementary" and "additional" dividends declared and paid by said two corporations in the twelve-month period immediately preceding the due date of any of such installments after March 10, 1943, to and including March 10, 1967, shall be less than \$250,000.00, such installments shall be reduced by a sum [381] equal to eleven per cent (11%) of such deficiency.

If, in any such twelve-month period the total amount of such "ordinary," "supplementary," and "additional" dividends declared and paid by said two corporations shall exceed the sum fixed above (\$420,000.00 or \$250,000.00, as the case may be) the installment due at the end of such period shall be increased by a sum equal to eleven per cent (11%) of such excess, but in no event more than the total amount of all outstanding reductions theretofore effected pursuant to the foregoing provisions hereof.

The undersigned further agrees to pay on account of said principal, to apply on the latest maturing installments then unpaid, a sum equal to eleven per cent (11%) of all dividends, other than "ordinary," "supplementary," and "additional" dividends, hereafter declared and paid by A. Hamburger & Sons, Inc.

If hereafter Article XX of the By-Laws of A. Hamburger & Sons, Inc., or Hamburger Realty Company shall be amended or repealed or shall



terminate by its terms, any dividends thereafter declared and paid by such corporations shall, for the purpose of computing the payments due hereunder, be deemed to be an "ordinary," "supplementary" or "additional" dividend to the extent they would have been such had such By-Law remained in full force and effect.

In case suit is instituted to collect this note, or any portion thereof, the undersigned further promises to pay such additional sum as the court may adjudge reasonable as attorney's fees in such suit.

This note and a note of like date for \$19,789.29 in favor of the above-named payee, are given in substitution of a renewal note dated January 1, 1938, for \$170,688.69 given in renewal of two promissory notes in favor of the above-named [382] payee, both dated January 27, 1937, one of which notes was signed by the undersigned alone, and the other of which was signed by the undersigned, Belle A. H. Nathan and Evelyn Hamburger. This note is for the renewal of the note signed by the undersigned alone, and the note for \$19,789.29 executed concurrently herewith is in renewal of one-third of the amount of the note signed by the undersigned, Belle A. H. Nathan and Evelyn Hamburger.

If default be made in the payment of any sums due hereunder, the holder hereof may, at its option, give written notice to the undersigned (served upon her in the manner provided by law for service of summons) of such default, and of its option to declare the entire unpaid balance of the indebtedness evidenced hereby immediately due and pay-

able; and if payment of such sums be not made within ninety (90) days after the giving of such notice, said entire indebtedness shall, at the expiration of such time, become immediately due and payable.

The undersigned is the owner of 261 shares of the capital stock of A. Hamburger & Sons, Inc., represented by Certificate No. 59. The undersigned agrees that A. Hamburger & Sons, Inc., has and shall have a lien for the securing of the indebtedness evidenced hereby and the indebtedness evidenced by said note for \$19,789.29 upon all of the right, title and interest of the undersigned in or to the shares of stock of A. Hamburger & Sons, Inc., represented by said Certificate No. 59 and now owned by the undersigned as aforesaid; and further agrees that said A. Hamburger & Sons, Inc., may apply any dividends hereafter declared by it, and payable upon any of such shares, to the payment of any sums then due and payable hereunder, or under said note for \$19,789.29. [383]

The undersigned agrees to permit A. Hamburger & Sons, Inc., to make appropriate endorsement referring to this note and to said note for \$19,789.29 upon the certificate representing said shares. Said endorsement may be in substantially the following form:

“The shares represented by this certificate are subject to a lien in favor of the issuing corporation as provided in two promissory notes of the holder of said shares dated January 1, 1938. As provided in said notes, the issuing cor-

poration has the right to apply dividends payable on the stock represented hereby to the payment of the indebtednesses evidenced by said notes; and may refuse to permit any transfer of said shares on its books until said indebtednesses shall have been fully paid, unless the transferee shall give his written consent that such transfer is made subject to the terms of said notes, including the right to apply dividends to the payment of said indebtednesses. For further terms of said lien and agreement reference is made to said promissory notes and the pledge agreement securing the same."

The undersigned further agrees that A. Hamburger & Sons, Inc., may, in its discretion, refuse to permit any transfer upon its books of any or all of the aforementioned shares of stock until after the entire indebtednesses evidenced hereby and by said note for \$19,789.29 shall have been paid, unless the transferee shall give his written consent that such transfer is made subject to all of the provisions of this note and of said note for \$19,789.29, including the right to apply dividends [384] to the payment of the indebtednesses secured hereby and by said note for \$19,789.29, as hereinbefore provided, and also including the application of this provision and of the similar provisions contained in said note for \$19,789.29 to any future transfers of said shares.

No transferee of said stock shall, however, be personally liable for the payment of the indebtedness

evidenced hereby unless he expressly assumes and agrees to pay the same.

Nothing herein contained shall be deemed to in anywise modify the obligation of A. Hamburger & Sons, Inc., and Hamburger Realty Company, or either of them, or of the members of the respective boards of directors to make and distribute dividends as provided by Article XX of the By-Laws hereinabove referred to of each of said corporations.

For the further securing of the indebtedness evidenced hereby and by said note for \$19,789.29, the undersigned has delivered to Union Bank & Trust Co. of Los Angeles the certificate representing the shares of stock aforesaid. In the event of any default by the undersigned in the making of any of the payments herein provided or provided in said note for \$19,789.29, A. Hamburger & Sons, Inc., is authorized to demand delivery of said certificate to it; and upon such delivery shall hold said certificate and the shares evidenced thereby in pledge for the further security hereof and for said note for \$19,789.29.

In Witness Whereof, the undersigned has executed this instrument as of January 1, 1938.

/s/ JENNIE H. MARX.

12/28/38

wab:eg [385]



## RESPONDENT'S EXHIBIT F

Los Angeles, California, January 1, 1938.

\$98,736.80

For value received, the undersigned promises to pay to A. Hamburger & Sons, Inc., a California corporation, or order, at the main office of Union Bank & Trust Co. of Los Angeles, in the City of Los Angeles, California, the sum of \$98,736.80 in installments as follows:

On or before March 10th of each of the years 1944 to 1967 (both inclusive), unless the entire principal of the indebtedness evidenced hereby shall have been sooner paid, the sum of \$3,950.00; and

On or before March 10, 1968, the entire unpaid principal balance of the indebtedness evidenced hereby.

All unpaid balances of said indebtedness shall bear interest at the rate of two per cent (2%) per annum, payable on March 10, 1939, and annually thereafter. The undersigned shall have the right at any time or times and from time to time to pre-pay any or all of said installments.

If the total amount of such "ordinary," "supplementary" and "additional" dividends declared and paid by said two corporations in the twelve-month period immediately preceding the due date of any of such installments to and including March 10, 1967, shall be less than \$250,000.00, such installment shall be reduced by a sum equal to 11% of such deficiency.

If, in any such twelve-month period the total amount of such "ordinary", "supplementary", and

“additional” dividends declared and paid by said two corporations shall exceed the sum of \$250,000.00, the installment due at the end of such period shall be increased by a sum equal to [386] 11% of such excess, but in no event more than the total amount of all outstanding reductions theretofore effected pursuant to the foregoing provisions hereof.

The undersigned further agrees to pay on account of said principal, to apply on the latest maturing installments then unpaid, a sum equal to 11% of all dividends, other than “ordinary,” “supplementary,” and “additional” dividends, hereafter declared and paid by A. Hamburger & Sons, Inc.

If hereafter Article XX of the By-Laws of A. Hamburger & Sons, Inc., or Hamburger Realty Company shall be amended or repealed or shall terminate by its terms, any dividends thereafter declared and paid by such corporations shall, for the purpose of computing the payments due hereunder, be deemed to be an “ordinary,” “supplementary” or “additional” dividend to the extent they would have been such had such By-Laws remained in full force and effect.

In case suit is instituted to collect this note, or any portion thereof, the undersigned further promises to pay such additional sum as the court may adjudge reasonable as attorney’s fees in such suit.

This note and a note of like date for \$19,789.29 in favor of the above-named payee, are given in substitution of a renewal note dated January 1, 1938, for \$118,526.09 given in renewal of two promissory

notes in favor of the above-named payee, both dated January 27, 1937, one of which notes was signed by the undersigned alone, and the other of which was signed by the undersigned, Belle A. H. Nathan, and Jennie H. Marx. This note is for the renewal of the note signed by the undersigned alone, and the [387] note for \$19,789.29 executed concurrently herewith is in renewal of one-third of the amount of the note signed by the undersigned, Belle A. H. Nathan, and Jennie H. Marx.

If default be made in the payment of any sums due hereunder, the holder hereof may, at its option, give written notice to the undersigned (served upon her in the manner provided by law for service of summons) of such default, and of its option to declare the entire unpaid balance of the indebtedness evidenced hereby immediately due and payable; and if payment of such sums be not made within ninety (90) days after the giving of such notice, said entire indebtedness shall, at the expiration of such time, become immediately due and payable.

The undersigned is the owner of 181 shares of the capital stock of A. Hamburger & Sons, Inc., represented by Certificate No. 57. The undersigned agrees that A. Hamburger & Sons, Inc., has and shall have a lien for the securing of the indebtedness evidenced hereby and the indebtedness evidenced by said note for \$19,789.29 upon all of the right, title and interest of the undersigned in or to the shares of stock of A. Hamburger & Sons, Inc., represented by said Certificate No. 57 and now owned by the undersigned as aforesaid; and fur-

ther agrees that said A. Hamburger & Sons, Inc., may apply any dividends hereafter declared by it, and payable upon any of such shares, to the payment of any sums then due and payable hereunder or under said note for \$19,789.29.

The undersigned agrees to permit A. Hamburger & Sons, Inc., to make appropriate endorsement referring to this note and to said note for \$19,789.29 upon the certificate representing said shares. Said endorsement may be in [388] substantially the following form:

“The shares represented by this certificate are subject to a lien in favor of the issuing corporation as provided in two promissory notes of the holder of said shares dated January 1, 1938. As provided in said notes, the issuing corporation has the right to apply dividends payable on the stock represented hereby to the payment of the indebtednesses evidenced by said notes; and may refuse to permit any transfer of said shares on its books until said indebtednesses shall have been fully paid, unless the transferee shall give his written consent that such transfer is made subject to the terms of said Notes, including the right to apply dividends to the payment of said indebtedness. For further terms of said lien and agreement reference is made to said promissory notes and to the pledge agreement securing the same.”

The undersigned further agrees that A. Hamburger & Sons, Inc., may, in its discretion, refuse



to permit any transfer upon its books of any or all of the aforementioned shares of stock until after the entire indebtedness evidenced hereby and by said note for \$19,789.29 shall have been paid, unless the transferee shall give his written consent that such transfer is made subject to all of the provisions of this note and of said note for \$19,789.29, including the right to apply dividends to the payment of the indebtednesses secured hereby and by said note for \$19,789.29, as hereinbefore provided, and also including the application of this provision and of the similar provision contained [389] in said note for \$19,789.29 to any future transfers of said shares.

No transferee of said stock shall, however, be personally liable for the payment of the indebtedness evidenced hereby unless he expressly assumes and agrees to pay the same.

Nothing herein contained shall be deemed to in anywise modify the obligation of A. Hamburger & Sons, Inc., and Hamburger Realty Company, or either of them, or of the members of the respective boards of directors to make and distribute dividends as provided by Article XX of the By-Laws hereinabove referred to of each of said corporations.

For the further securing of the indebtedness evidenced hereby and by said note for \$19,789.29, the undersigned has delivered to Union Bank & Trust Co. of Los Angeles the certificate representing the shares of stock aforesaid. In the event of any default by the undersigned in the making of any of the payments herein provided or provided in said

note for \$19,789.29, A. Hamburger & Son., Inc., is authorized to demand delivery of said certificate to it; and upon such delivery shall hold said certificate and the shares evidenced thereby in pledge for the further security hereof and for said note for \$19,789.29.

In Witness Whereof, the undersigned has executed this instrument as of January 1, 1938.

/s/ EVELYN HAMBURGER.

wab:eg

12/22/38

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The Tax Court of The United States

Docket No. 3992

ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, P. L. NATHAN, et al., Executors,  
505 South Windsor Boulevard, Los Angeles,  
California,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent,

### STIPULATION OF FACTS

It Is Hereby Stipulated, by and between the above-entitled parties, by and between their respective counsel, that the following facts are true:

## I.

That Belle Alice Hamburger Nathan died on the 13th day of October, 1940. That P. L. Nathan and Evelyn Hamburger are the duly appointed, qualified and acting Executors of the Last Will and Testament of said decedent.

## II.

That said Executors did elect the optional date of valuation, as authorized by Section 811 (j) of the Internal Revenue Code. That the basic date is October 13, 1941.

## III.

That petitioners duly filed Federal Estate Tax Return, Form 706, with the Collector of Internal Revenue, Sixth District of California, within the time prescribed by law, and concurrently with the [391] said filing paid the tax shown to be due thereon.

## IV.

That the Exhibits numbered 1 to 8, both inclusive, hereto attached and made a part hereof, may be introduced into evidence and accepted by the above-entitled Court as true;

Exhibit 1 is a Balance Sheet of the Hamburger Realty Company on the basic date hereof, showing in Column A thereof the book value of the assets, liabilities, and the total net worth, and in Column B thereof, the fair market value of the assets.

Exhibit 2 is the Profit and Loss Statement of Hamburger Realty Company for the period be-

ginning 1936 to and including the year 1943.

Exhibit 3 is the record of the dividends paid by the Hamburger Realty Company for the period beginning 1936 to and including the year 1943.

Exhibit 4 is the Balance Sheet of A. Hamburger & Sons, Inc., showing the assets, liabilities, and total net worth thereof, together with their book value in Column A and their fair market value on the basic date in Column B, with the exception of the asset 104.167 shares of Hamburger Realty Company stock, which shows only the book value in Column A. The Tax Court of the United States is authorized to insert in Column B the fair market value found by it for the shares of stock of the Hamburger Realty Company.

Exhibit 5 is the Profit and Loss Statement of A. Hamburger & Sons, Inc., for the period beginning with the year 1936 to the year 1943, both inclusive.

Exhibit 6 shows the dividends paid by A. Hamburger & Sons, Inc., for the period beginning with the year 1936 to the year 1943, both inclusive. [392]

Exhibit 7 is Lease entered into by and between A. Hamburger & Sons, Inc., and The May Department Stores Company on the 30th day of March, 1923.

Exhibit 8 is Lease entered into by and between Hamburger Realty Company and The May Department Stores Company under date of the 30th day of March, 1923.



## V.

That on the 30th day of March, 1923, there was in existence a lease from the Hamburger Realty Company to A. Hamburger & Sons, Inc., for the property situated at Broadway, Eighth and Hill Streets, Los Angeles, California, which lease terminated on December 31, 1942, and which lease provided for an annual rental of \$250,000.00 payable by the said A. Hamburger & Sons, Inc., to Hamburger Realty Company.

## VI.

That both the Hamburger Realty Company and A. Hamburger & Sons, Inc., are corporations organized and existing under the laws of the State of California, with their principal office and only place of business located in the County of Los Angeles, State of California.

## VII.

That on the basic date the number of shares of stock of Hamburger Realty Company issued and outstanding was 1000 shares of common stock of \$1000.00 par value each.

## VIII.

That on the basic date the number of shares of stock of A. Hamburger & Sons, Inc., issued and outstanding was 3,774.183 shares of the common stock of \$1000.00 par value each.

## IX.

That on the basic date there were no other shares of stock, [393] either common, preferred, or other-

wise, and no bonds of the Hamburger Realty Company or A. Hamburger & Sons, Inc., outstanding.

### X.

Attached hereto and marked Exhibit 9 is a copy of pages 1919 to 1922, inclusive, of Moody's Manual of Investment, 1941 Edition, being the portion of the Manual containing the report on The May Department Stores Company.

### XI.

The stock of the Hamburger Realty Company on the basic date was owned as follows:

104.167 shares by Petitioners herein;

104.167 shares by Evelyn Hamburger;

104.167 shares by Jennie H. Marx, or by a Trust created by her;

291.666 shares by David A. Hamburger Corporation; and

291.666 shares by David A. Hamburger as Trustee of the Estate of M. A. Hamburger, deceased;

104.167 shares by A. Hamburger & Sons, Inc.

### XII.

That the stock of A. Hamburger & Sons, Inc., on the basic date was owned as follows:

425.817 shares by Petitioners herein;

425.817 shares by Evelyn Hamburger;

425.817 shares by Jennie H. Marx, or by a Trust created by her;

1248.366 shares by David A. Hamburger Corporation; and

1248.366 shares by David A. Hamburger as Trustee of the Estate of M. A. Hamburger, deceased. [394]

### XIII.

That all of the parties named in Paragraphs XI and XII are brothers and sisters.

### XIV.

That no shares of stock of Hamburger Realty Company or of A. Hamburger & Sons, Inc., have ever been sold and that each of said corporations is a closed family corporation.

### XV.

That on the basic date the President, General and Executive Manager of said corporations was David A. Hamburger, aged 84 years. That the Vice President of said corporations on the basic date was Evelyn Hamburger, aged 72 years. That the Secretary-Treasurer of each of said corporations was P. L. Nathan, aged 76 years. That said Jennie H. Marx was 81 years of age on the basic date.

### XVI.

That neither the Articles of Incorporation of A. Hamburger & Sons, Inc., nor of Hamburger Realty Company provide for cumulative voting of the stock.

### XVII.

That the additional deduction as compensation for the Executors of the above-named decedent over

and above the fees heretofore allowed in the statutory notice of deficiency, being Exhibit A attached to the petition on file herein, will be submitted on recomputation under Rule 50. [395]

### XVIII.

That the additional deduction as compensation for the fees of the attorneys for Petitioners over and above the fees heretofore allowed in the statutory notice of deficiency, being Exhibit A attached to the petition on file herein, will be submitted on recomputation under Rule 50.

### XIX.

That either party hereto may introduce such additional evidence as is not in conflict with this Stipulation.

Dated this 3rd day of October, 1945.

/s/ CLAUDE I. PARKER,  
/s/ RALPH W. SMITH,  
/s/ J. EVERETT BLUM,  
Counsel for Petitioners.

/s/ J. P. WENCHEL,  
Counsel for Respondent. [396]



## EXHIBIT 1

Belle A. H. Nathan Estate

Hamburger Realty Company

## BALANCE SHEET

## Assets:

	Column A Book Value	Column B Fair Market Value
A. Cash on hand \$10,720.74 and Accounts Receivable \$145.96 .....	\$ 10,866.70	\$ 10,866.70
B. Stocks:		
1. 275 shares Farmers & Merchants National Bank of Los Angeles, Calif. ....	71,234.00	106,700.00
2. 678 shares Security- First National Bank of Los Angeles, Calif.	31,477.50	32,967.75
3. 140 units Security Company .....	None	4,340.00
4. 10 shares Wells Fargo Bank & Trust Co.....	1,855.00	2,925.00
5. 500 shares Angelus Hospital Association	350.00	350.00
6. 13 shares Retail Mer- chants Credit Ass'n.	1,285.00	1,285.00
C. Real Estate:		
1. W. 8th, Broadway & Hill Sts. property under lease to A. Hamburger & Sons, Inc. and May Co.....	1,185,421.44	4,000,000.00
2. #845 So. Broadway property .....	101,107.46	315,600.00
3. 36/144th interest S. W. Cor. 15th & Hill..	19,164.78	3,000.00
4. 2/10th interest N. E. Cor. 14th Place & Hill .....	13,205.88	2,000.00

	Column A Book Value	Column B Fair Market Value
5. 6/30th interest S. E. Cor. 14th & Hill Sts. \$	6,880.38	\$ 1,400.00
6. 1/2 interest N. E. Cor. 15th & Hill Sts.....	51,433.30	6,000.00
7. Vallejo, Solano County property .....	None	None
8. 1404 So. Hill St. ....	26,692.26	5,000.00
9. 149 W. 14th Place....	39,937.31	6,000.00
10. 1318/22 So. Hill St...	74,111.35	5,800.00
11. S. W. Cor. 15th & Hill Streets .....	60,398.50	6,000.00
12. Temple Street prop- erty .....	10,589.35	3,500.00
13. 14th Place & S. Broadway .....	26,622.61	3,500.00
14. S. E. Cor. 10th & Main Streets .....	200,006.40	30,000.00
15. S. E. Cor. Ezra St. & Pico Blvd.....	2,468.82	500.00
16. W. 15th btn. Hill & Olive Streets .....	5,288.32	3,000.00
D. Office Furniture & Fixtures	None	100.00
E. Prepaid taxes and insur- ance .....	6,547.82	6,547.82
F. Sales contract — Leroy Joseph .....	250.00	250.00
Total Assets .....	\$1,947,164.18	\$4,557,632.27
<b>Liabilities:</b>		
A. Accounts Payable .....	\$ 6,391.90	\$ 6,391.90
B. Federal income and excess profits taxes .....	70,116.03	70,116.03
C. Note due A. Hamburger & Sons, Inc. ....	548,220.70	548,220.70
D. Lease rental deposits from lessees .....	5,750.00	5,750.00
Total Liabilities ....	\$ 630,478.63	\$ 630,478.63
Net Worth .....	\$1,316,685.45	\$3,927,153.64

## EXHIBIT 2

Belle A. H. Nathan Estate  
Hamburger Realty Company

## PROFIT &amp; LOSS STATEMENT

Year			
1936	Receipts .....	\$282,839.06	
	Expenses .....	85,805.39	
		<hr/>	
		197,033.67	
	Federal Income Tax .....	27,936.41	\$169,097.26
		<hr/>	
1937	Receipts .....	\$285,569.43	
	Expenses .....	80,345.72	
		<hr/>	
		205,223.71	
	Federal Income Tax.....	28,709.47	176,514.24
		<hr/>	
1938	Receipts .....	\$291,041.44	
	Expenses .....	82,874.28	
		<hr/>	
		208,167.16	
	Federal Income Tax.....	33,629.85	174,537.31
		<hr/>	
1939	Receipts .....	\$293,643.30	
	Expenses .....	80,615.30	
		<hr/>	
		213,028.00	
	Federal Income Tax.....	34,694.30	178,333.70
		<hr/>	
1940	Receipts .....	\$272,540.06	
	Expenses .....	77,613.33	
		<hr/>	
		194,926.73	
	Federal Income Tax.....	45,319.37	149,607.36
		<hr/>	

Year			
1941	Receipts .....	\$294,825.72	
	Expenses .....	73,272.94	
		<hr/>	
		221,552.78	
	Federal Income Tax.....	70,116.03	\$151,436.75
		<hr/>	
1942	Receipts .....	\$293,138.32	
	Expenses .....	73,447.84	
		<hr/>	
		219,690.48	
	Federal Income Tax.....	92,035.28	127,655.20
		<hr/>	
1943	Receipts .....	\$340,321.88	
	Expenses .....	93,711.28	
		<hr/>	
		246,610.60	
	Federal Income Tax.....	116,529.99	130,080.61
		<hr/>	

## EXHIBIT 3

Belle A. H. Nathan Estate  
Hamburger Realty Company

## DIVIDENDS DECLARED

Year		
1936—January 6 .....		\$183,082.14
1937—January 7 .....		171,769.75
1938—January 7 .....		176,514.24
—February 17 .....		1,091.32
1939—February 7 .....		174,537.31
—December 13 .....		9,571.18
1940—February 8 .....		176,260.91
—March 7 .....		2,072.79
1941—January 15 .....		149,607.36
1942—March 12 .....		151,436.75
1943—March 15 .....		129,160.76



EXHIBIT 4

Belle A. H. Nathan Estate

A. Hamburger & Sons, Inc.

BALANCE SHEET

Assets:	Column A Book Value	Column B Fair Market Value
A. Cash on hand and in banks .....	\$ 113,706.56	\$ 113,706.56
B. U. S. Treasury Bonds & Certificates:		
1. \$141,500.00 P. V. Series 1945-7 2¾%.....	139,139.06	152,245.15
Interest .....	1,134.95	302.67
2. \$100.00 P. V. Series 1955-60 2⅞% .....	98.50	111.41
Interest .....	.84	.22
3. \$122,000.00 P. V. Series 1955-60 2⅞%.....	120,633.84	135,915.63
Interest .....	730.73	272.79
4. \$126,150.00 P. V. Series 1943-45 3¼%.....	124,272.81	133,324.78
Interest .....	854.15	2,027.10
5. \$84,100.00 P. V. Series 1944-46 3¼%.....	82,841.87	89,776.75
Interest .....	569.43	1,351.40
6. \$100.00 P. V. Series 1944-46 3¼% .....	100.00	106.75
Interest .....	.68	1.61
7. \$150,000.00 P. V. Series 1947-52 4¼%.....	168,187.50	177,000.00
Interest .....	1,436.54	3,152.10
C. Notes Receivable of S. W. Levenson .....	1,500.00	1,500.00
Interest .....	11.25	None
D. Mortgages & Trust Deeds:		
1. Estate of Belle A. H. Nathan .....	55,797.61	55,797.61
Interest .....	None	None
2. Armenian Gethsemane Church .....	3,000.00	3,000.00
Interest .....	52.50	20.00

E. Bonds:		Column A Book Value	Column B Fair Market Value
1.	\$100,000.00 P. V. L. A. City High School Dis- trict 4 $\frac{3}{4}$ % 3/1 and 9/1 .....	\$ 103,815.22 }	\$ 103,815.22 }
	Interest .....	1,583.33 }	554.10 }
2.	\$3,100.00 P.V. Calif. Country Club 7% 5/1 and 11/1 .....	3,050.00 }	3,050.00 }
	Interest .....	None }	None }
F. Stocks:			
1.	20 Shares American Tel. & Tel. ....	2,105.00	3,057.50
2.	1,167 shares Texas Corporation .....	35,933.88	47,409.38
3.	1,505 shares Union Oil Co. of Calif. ....	25,812.50	22,575.00
4.	400 shares Inglewood Park Cemetery .....	16,000.00	30,000.00
5.	1,000 shares Standard Oil Co. of Calif.....	41,375.00	23,000.00
G. Real Estate:			
1.	955 S. Alvarado, Aca- cia Arms .....	44,798.22	30,000.00
2.	421 E. 7th Street, Stadler Hotel .....	81,520.78	65,000.00
3.	5320 Olympic Blvd., Meadowbrook Apts....	55,345.66	25,000.00
4.	3123-9 Sunset Blvd., Westerly Terrace .....	33,175.20	17,500.00
5.	420 N. Coronado Street .....	20,644.63	15,000.00
6.	440 N. Coronado Street .....	20,111.59	15,000.00
7.	2311 Nottingham Street .....	23,959.68	16,500.00
8.	1034-40 W. Temple Street .....	15,695.49	13,500.00
9.	N. E. Cor. Santa Mon- ica & Serrano .....	51,636.53	25,000.00
10.	21 Avenue 26, Venice, California .....	3,703.76	2,500.00

	Column A Book Value	Column B Fair Market Value
11. 4500/10 Santa Monica Blvd. ....	\$ 30,005.61	\$ 15,000.00
12. 901 Exposition Blvd.	30,902.37	27,500.00
13. 932 S. Mariposa Street	20,313.74	15,000.00
14. 2418-22 Brooklyn Street .....	20,655.87	18,750.00
15. S. E. Cor. 90th & Broadway .....	10,502.04	9,500.00
16. Cor. Jefferson & Grand, Warehouse ....	179,675.79	300,000.00
17. 2165-9 W. Washing- ton Street .....	25,461.25	15,000.00
18. 423 S. Western Ave- nue .....	53,254.60	18,000.00
19. 6425 Santa Monica Blvd., Flomar Apts...	63,261.33	50,000.00
20. 1627 Ingraham Street	32,639.24	25,000.00
21. 3800 S. Vermont Ave- nue .....	52,443.06	43,500.00
22. 1245 W. 49th Street....	3,891.05	2,750.00
23. S. E. Cor. Clinton & Madison Streets .....	19,589.78	5,000.00
24. Lot 12 and part Lot 5, Sec. 18 Twp. 2, R. 2 W. Riverside County (8,059/10,000ths Inter- est) .....	1,227.29	500.00
25. 8/30th interest 1402 S. Hill Street .....	15,099.43	1,850.00
26. 2/10th interest N. E. Cor. 14th Place & Hill St.- .....	11,113.71	2,000.00
27. 5/144th interest S. W. Cor. 15th & Hill Sts...	3,022.72	425.00
28. 1/2 interest N. E. Cor. 15th & Hill Streets....	48,318.71	6,000.00
29. 1235 So. Hill Street..	47,933.87	6,400.00
H. 104.167 Shares Hamburger Realty Co. ....	382,525.73	.....

	Column A Book Value	Column B Fair Market Value
I. Due from Affiliated Corporations:		
1. David A. Hamburger Corporation @ 2% (1/1/38) .....	\$ 560,000.00	\$ 420,000.00
Interest .....	6,096.49	1,026.76
2. David A. Hamburger Corporation @ 2% (12/13/39) .....	12,000.00	12,000.00
Interest .....	259.00	80.00
3. Hamburger Realty Co. 2% (12/31/40) ..	548,220.70	548,220.70
Interest .....	None	None
4. David A. Hamburger Corpor'n. — open account .....	161,299.29	161,299.29
J. Due from Officers and Stockholders:		
1. Evelyn Hamburger \$74,052.60 & \$3,988.64	102,725.44	78,041.24
2. Estate of Belle A. H. Nathan \$49,520.89 and \$11,209.29 .....	77,237.14	60,730.18
3. Jennie H. Marx \$113,174.55 .....	150,899.40	113,174.55
4. Estate of M. A. Hamburger \$409,186.14.....	409,186.14	409,186.14
Interest .....	1,977.70	2,341.36
K. Open Accounts— Stockholders:		
1. Evelyn Hamburger ....	94,972.06	94,972.06
2. Jennie H. Marx .....	94,502.53	94,502.53
3. Estate of M. A. Hamburger .....	87,504.20	87,504.20
4. Estate of Belle A. H. Nathan .....	45,560.83	45,560.83
L. Prepaid taxes, prepaid insurance and prepaid rent commissions .....	11,744.01	11,744.01
Total Assets .....	\$4,810,357.31	\$4,030,632.58



	Column A Book Value	Column B Fair Market Value
Liabilities:		
A. Current Liabilities .....	\$ 444,244.98	\$ 444,244.98
B. Federal Income and Excess Profits Taxes .....	96,489.07	96,489.07
C. Lease rental deposits from lessees .....	14,382.50	14,382.50
	<hr/>	<hr/>
Total Liabilities ....	\$ 555,116.55	\$ 555,116.55
Net Worth .....	\$4,255,240.76	\$3,475,516.03
	<hr/> <hr/>	<hr/> <hr/>

Under the terms of the lease between A. Hamburger & Sons, Inc. and The May Department Stores Co. dated March 30, 1923 (Exhibit 7), A. Hamburger & Sons, Inc. was entitled to receive, during the period commencing November 1, 1941 and ended December 31, 1942, the sum of \$604,-078.16 and during this same period A. Hamburger & Sons, Inc. was obligated to pay to the Hamburger Realty Co. as rental for the same property (Paragraph V of this Stipulation) the sum of \$291,666.66. The excess of the amount that A. Hamburger & Sons, Inc. was entitled to receive from The May Department Stores Company over and above the amount A. Hamburger & Sons was required to pay to the Hamburger Realty Co. during the period commencing November 1, 1941 and ended December 31, 1942, was \$312,411.49 which, when discounted at 6% (.9433) to the date of receipt, had a value at October 13, 1941 of \$394,-697.77 and, when discounted at 7% to the date of receipt, had a value at October 13, 1941 of \$294,-218.75. This sum is not, nor is any portion thereof, carried as an asset, and is not reflected in the above Balance Sheet.

## EXHIBIT 5

Belle A. H. Nathan Estate

A. Hamburger &amp; Sons, Inc.

## PROFIT &amp; LOSS STATEMENT

Year			
1936	Receipts .....	\$397,685.74	
	Expenses .....	59,928.64	
		<hr/>	
		337,757.10	
	Federal Income Tax.....	41,360.14	\$296,396.96
		<hr/>	
1937	Receipts .....	\$445,422.81	
	Expenses .....	66,986.65	
		<hr/>	
		378,436.16	
	Federal Income Tax .....	44,051.15	334,385.01
		<hr/>	
1938	Receipts .....	\$416,682.57	
	Expenses .....	60,718.16	
		<hr/>	
		355,964.41	
	Federal Income Tax.....	50,694.87	305,269.54
		<hr/>	
1939	Receipts .....	\$416,551.04	
	Expenses .....	62,180.38	
		<hr/>	
		354,370.66	
	Federal Income Tax.....	50,511.86	303,858.80
		<hr/>	
1940	Receipts .....	406,941.05	
	Expenses .....	60,936.33	
		<hr/>	
		346,004.72	
	Federal Income Tax.....	71,493.34	274,511.38
		<hr/>	

Year			
1941	Receipts .....	\$410,128.89	
	Expenses .....	62,116.66	
		<hr/>	
		348,012.23	
	Federal Income Tax.....	96,489.07	\$251,523.16
		<hr/>	
1942	Receipts .....	\$417,465.74	
	Expenses .....	60,998.51	
		<hr/>	
		356,467.23	
	Federal Income Tax.....	135,911.53	220,555.70
		<hr/>	
1943	Receipts .....	\$154,476.52	
	Expenses .....	53,730.81	
		<hr/>	
		100,745.71	
	Federal Income Tax.....	26,108.48	74,637.23
		<hr/>	

## EXHIBIT 6

Belle A. H. Nathan Estate

A. Hamburger & Sons, Inc.

### Dividends Declared

Year		
1936—	March 24 .....	\$295,912.43
1937—	January 7 .....	262,478.08
	—January 27 .....	50,734.00
	—December 29 .....	6,350.00
1938—	January 7 .....	276,997.91
	—February 17 .....	41,615.44
1939—	February 7 .....	305,269.54
1940—	February 8 .....	300,579.11
	—March 7 .....	3,946.97
1941—	January 15 .....	274,511.38
1942—	March 12 .....	251,523.16
1943—	March 15 .....	222,687.57

## EXHIBIT 7

This Indenture of sublease made and entered into at Los Angeles, California, this 30th day of March, 1923, by and between A. Hamburger & Sons, Incorporated, a corporation organized and existing under the laws of the State of California, party of the first part, hereinafter designated as Lessor, and The May Department Stores Company, a corporation organized and existing under the laws of the State of New York, party of the second part, hereinafter designated as Lessee.

Witnesseth:

That said Lessor for and in consideration of the covenants and agreements hereinafter contained to be kept and performed by the Lessee, and in consideration of the rights herein reserved, does hereby lease and demise unto the said Lessee, and the said Lessee hereby takes and accepts from said Lessor all that certain real property with the building and appurtenances thereunto belonging, including the boilers, heating equipment and machinery, being situate in the City of Los Angeles, County of Los Angeles, State of California, and more particularly described as follows:

Lot C of re-subdivision of the portion of Block 52 of the Huber Tract, as per map recorded in Book 12, Page 1, of Maps in the office of the County Recorder of Los Angeles County.

Also Lot 20 in Block 52 of the Huber Tract in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 2, Page 280, Miscellaneous Records of said County.

This Lease is made for the term and upon the conditions, covenants and agreements hereinafter expressed; and said Lessor for itself, its successors and assigns, and said Lessee for itself, its successors and assigns, do hereby respectively agree to keep, observe and perform each and all of the conditions, provisions and agreements hereinafter provided to be kept, observed and performed by said Lessor and said Lessee respectively, to-wit:

#### I. Term

The term of this sublease shall be twenty (20) years, commencing on the first day of January, 1923, and ending on the 31st day of December, 1942. [405]

#### II. Rent

(a) The Lessee does hereby covenant and agree to pay to Lessor as rental for the said premises for the term hereof the sum of Ten Million Three Hundred Fifty-five Thousand Six Hundred Twenty-five Dollars and Six Cents in monthly installments, payable in advance on the first day of each and every calendar month during the term hereof, said monthly installments to be in the sum of Forty-three Thousand One Hundred Forty-eight Dollars and Forty-four Cents each, commencing on the first day of January, 1923, as aforesaid.



(b) Receipt of the sum of One Hundred Twenty-nine Thousand Four Hundred Forty-five Dollars and Thirty-two cents being the monthly installments for the months of January, February and March, 1923, is hereby acknowledged.

### III. Taxes and Assessments

(a) As a further consideration for the leasing and demising, as aforesaid, of the said premises to the said Lessee, the said Lessee covenants and agrees to bear, pay and discharge in addition to the rents heretofore reserved herein, all taxes, assessments, levies, rates, duties, tolls, imposts and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time, or from time to time, during the term hereof, by or according to any law or governmental, legal, political or military order or authority whatsoever, directly or indirectly, be taxed, charged, levied, assessed or imposed upon or against, or which shall be or may be or become a lien upon this sublease, or upon all or any part of the land, building, or premises hereby leased, or any building, improvement or structure now located, or that may be hereafter located or built thereon, or any estate, right, title or interest of the Lessor and of the Lessee, or either of them, or of their respective successors or assigns in or to said demised premises, or said building, improvements or structure; including also all water rates, gas, electric, fuel and power rates which may be charged against said

premises during the term hereof; provided, however, that if any of the following obligations or liabilities shall be or become such lien, the Lessee shall not be required to pay or discharge the same, under the terms of this lease, to-wit:

1. Any corporation franchise tax or corporation license fees which may be levied upon or against the Lessor.

2. Any tax which may be levied by the United States of America, or the State of California, upon or against the income, profits or capital stock of the Lessor, or any inheritance tax.

3. Any taxes which may be levied upon or against [406] any real property of the Lessor other than the real property described in this lease.

It is understood and agreed that the first taxes to be paid by said Lessee shall be the second half of the City and County taxes for the fiscal year 1922-23. The said Lessee further covenants and agrees to deliver to Lessor, tax receipts of all taxes, assessments and charges hereinbefore referred to, showing the payment of all taxes and assessments of every kind, nature and description whatsoever that shall have been levied or imposed upon said premises, or any part thereof, during the term hereof.

(b) The land, buildings and improvements covered and affected by this lease shall always be

assessed for the purposes of taxation in the name of the Lessor, and Lessee agrees, at the proper times, to make and file the necessary statement with the proper taxation authorities so that hereafter the whole of the premises hereby demised will be assessed in the name of said Lessor during the entire period of the term hereof.

#### IV. Building

It is understood and agreed that said Lessee has examined and knows the contents and condition of the premises herein demised, and it is hereby acknowledged that no statements, warranties or representations of any kind whatsoever regarding the present or future condition of said premises have been made by Lessor to Lessee except as are herein specifically set forth, and it is agreed that said premises are now in good condition and repair, and said Lessee hereby accepts the same in their present condition.

#### V. Upkeep and Repair

It is further understood and agreed that Lessor is not bound to keep said premises in repair, and that said Lessee shall make all repairs in and about said premises, and said Lessee agrees to keep the same in good condition and repair during the entire term hereof, and at the end of the term hereof, or at any sooner termination, to quit, surrender and deliver the possession of the herein demised premises to said Lessor in as good condition as exists at the date hereof, ordinary use and damages by the ele-

ments excepted. In case Lessee fails to keep said premises in repair, Lessor shall have the right to enter in or upon said demised premises, or to make any and all repairs necessary or proper to protect or preserve said premises, and all said repairs so made shall be at the expense of said Lessee, and said Lessee hereby agrees to repay to said Lessor any expense so incurred upon the first day of the calendar month succeeding the making of said repairs. [407]

## VI. Use of Premises and Indemnity

(a) Lessee hereby covenants and agrees that said premises, and each and every part thereof, shall be used solely and exclusively as and for a department store, and all businesses usually carried on in connection therewith, and for no other purposes whatsoever. It is understood and agreed however that, due to the shifting of business or of the shopping center in Los Angeles, or to any other local conditions, it may be impossible or impractical to conduct a department store at a profit in the herein demised premises, in which event Lessee, or its assigns under valid assignment, may use said premises for any first class lawful commercial use as distinguished from special or limited use, such as theaters, hotels and similar uses, and so long as said use is of such a character as not to injure the reputation of the premises or the sale value or rental value thereof. Lessee covenants and agrees that it will not use, or permit any other person or persons to use said demised premises, or any part



thereof, in any manner or for any purpose in violation of any of the laws of the United States or of the State of California, or of any Ordinance of the City of Los Angeles, or of any rule or regulation of any Board, Commission or other Municipal or Governmental agency affecting said premises or the use thereof; and not to use said premises, or any part thereof, so as to constitute a public nuisance, or a nuisance to the owners of adjoining or neighboring property, or to maintain any nuisance on said premises, or for any other use whatsoever that would tend to injure the reputation or rental or other value of said premises; that it will not use said premises, or any part thereof, for any purpose or in any manner, or do or permit to be done, or suffer to be done, any act or thing whatsoever that will violate any policy of insurance, or or suspend or render inoperative any policy of fire or rent insurance now or hereafter, during the term hereof, carried on the whole or any part of said demised premises, and particularly that it will not keep, or suffer or permit to be kept, on said demised premises any gasoline, distillate or other petroleum product for use for heating, lighting, or other purpose, or that may be extra hazardous, without first obtaining the written consent of all insurance companies carrying fire or rent insurance upon said premises, or any part thereof. It is further agreed that Lessee shall conform to all laws, ordinances, rules and regulations affecting said premises, and the sidewalks and streets and alleys in front of or around said premises; that it will keep and save



harmless said Lessor from any damage or penalty or charges imposed for violation of any of said laws occasioned by the use, misuse or neglect of said Lessee, or of any tenant or tenants holding under it, and of all other persons occupying said premises.

(b) It is further agreed that said Lessor shall not be liable for any damage of any kind occasioned by [408] failure to keep said premises in repair during the term hereof, and shall not be liable to the said Lessee, or to any one else, for or on account of any damage or injury done or occasioned by or from the use, misuse or neglect of the herein demised premises, or from the condition of said premises or the plumbing, gas, water, steam or other pipes or sewage, or in any other way or manner growing out of the present, past or future condition of said premises, nor on account of the elevators, escalators, engines or machinery of said building, or for accidents, injuries or damages in or about the portion thereof, or otherwise; and it is further agreed that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage or expense arising out of any action or other occurrence causing injury to any person or property whatsoever due directly or indirectly to the use of said premises, or any part thereof, by said Lessee or any person or persons holding under it or in its employment, or otherwise using said premises, including damage or injury to any person or property occurring in the streets or on the

sidewalks due directly or indirectly to the use of said premises, and to carry adequate accident insurance covering the same.

#### VII. Improvements or Additions to the Building

(a) Lessee is hereby given the right to erect additional stories on the building hereby demised so long as the erection of said additional stories are not in violation of any building ordinances or regulations of the City of Los Angeles, provided that before the erection of such additional stories Lessee shall first obtain the written approval of the Lessor, or of the architect of Lessor, of the plans and specifications for such additional stories, provided, however, that such approval shall not be unreasonably withheld. Such additional stories and any other alterations in, or additions to, the building now standing on said premises shall be entirely at Lessee's own cost and expense, and any such additional stories, additions or alterations shall immediately be and become a part of the realty, and shall be and remain the property of the Lessor, but any trade fixtures placed by Lessee in or about said premises at any time during the term hereof may be removed therefrom by Lessee at or prior to the expiration of the term hereof unless said Lessee be in default in any of the terms hereof, upon condition, however, that Lessee shall immediately repair any and all damage caused to said demised premises, or any part thereof, by the removal of any such trade fixtures.

(b) Any changes, repairs, alterations or improvements in the herein demised building other than the erection of additional stories thereon may be made by Lessee at its own cost without the approval of said Lessor, upon the express restriction and condition, however, that such changes, repairs, alterations or improvements shall be of such a character as not to weaken or impair the structural strength of said building, and upon the further restriction and condition that such changes, repairs, alterations or improvements will not render said building improper for department store uses, or for such [409] other first class commercial uses as, at the time of the making thereof, Lessee may be permitted to use said premises for, under the condition specified in Paragraph VI hereof.

#### VIII. Mechanics' and Other Liens

(a) All of the provisions of this lease relating to mechanics' or other liens, and all of the obligations of Lessee with reference thereto, shall apply not only to the building now standing upon the demised premises, but to every substitute therefor and replacement thereon, and to any and all repairs, additions, restorations and work that may be **done or caused to be done** at any time by Lessee in or upon the demised premises, or any building or structure standing thereon.

Lessee covenants and agrees to keep the demised premises and all buildings thereon, and every part thereof and interest therein, free and clear of me-

chanics' liens and other liens for labor, services, supplies, equipment or materials, and agrees that at all times it will fully pay and discharge and wholly protect and save harmless Lessor, and the right, title and interest of Lessor, and its successors and assigns in and to said premises, and the whole thereof, from any and all demands or claims which may or could ripen into such liens, and from any such liens, and from any attorneys' fees and costs and expenses which may be incurred by Lessor or by Lessee by reason of or on account of any such liens or claims, or the assertion or filing thereof. Should Lessee fail to pay off and fully discharge any such liens or claims within thirty (30) days after the same have attached to said property, or to any interest therein, Lessor at its option may pay, adjust or compromise the same, or any portion thereof, in any such manner as it may elect, and in so doing Lessor shall be and remain the sole judge of the legality of such lien or claim, and the validity thereof, to the full amount of such payment, adjustment or compromise provided, however, that if Lessee desires to do so, it may contest any such claim or lien upon giving written notice to Lessor within said period of thirty (30) days of its intention so to do. In the event that said contest be made and litigation should ensue, then within ten (10) days after the entry of any final judgment which may be recovered in any such action against said Lessor or against said Lessee, or either of them, or against said premises or against any part thereof,



or any interest therein, Lessee shall pay and fully discharge said judgment; and in the event that Lessee fails or neglects so to do, Lessor may make such payment, or adjust or compromise such claim or judgment in such manner as it may elect. In the event of any such litigation at all times after entry of any judgment, and pending the final determination of such litigation, Lessee by proper orders of Court or by deposit of money, or by a good and sufficient undertaking, or otherwise, as may be required or [410] permitted by law, shall wholly stay and keep wholly stayed any execution of any such judgment, and of every part thereof, that may be rendered or entered in said litigation against said Lessor or said Lessee, or against any estate or interest of either of them in or to said leased premises or any buildings or improvements thereon; and if such stay of execution should not be accomplished, or if the same shall not be preserved at all times as aforesaid, Lessor at any time after the ten (10) days' written notice to the Lessee of its intention so to do, may compromise and cause any judgment to be satisfied and discharged upon such terms and conditions as the Lessor may deem fit.

(b) In any event whatsoever Lessor shall have the right at its option to redeem the leased premises and the buildings and improvements thereon, or any part thereof, or any and every estate, right, title, and interest therein, from any and all sale under any judgement or any foreclosure of any mechanics'



lien or lien of like nature, without any notice whatsoever to said Lessee.

Lessee agrees to pay to Lessor and to reimburse it for all moneys which it may pay out in discharge of any such claims, liens or judgment, or for any redemption from any said sale, and for all reasonable attorneys' fees, costs and expenses which may be incurred by Lessor by reason or on account of the same; and all such sums of money shall be repaid by Lessee to Lessor on or before the first day of the calendar month ensuing after the same shall have been expended by Lessor.

(c) The payment by Lessor of any such claim, lien, or judgment in the manner above described, or the payment and making of any such redemption in the manner above described, shall, as between the parties hereto, be deemed to be conclusive evidence of the validity of such claim, lien, judgment or sale, and of the regularity of all acts and proceedings relative thereto to the extent of the full amount expended by the Lessor therein or therefor.

(d) Lessee shall give notice promptly and in writing to Lessor as soon as it receives any information of any claim, lien or suit affecting the premises hereby demised, or any part thereof, or any interest therein.

(e) It is agreed between the parties hereto, and notice to whom it may concern is hereby given by Lessor, that Lessor shall not, nor shall its successors or assigns, nor shall any part of the premises herein demised, or of any interest therein or thereto, be

or become liable for or on account of any lien or liens, or claim or claims, that may be asserted or filed for or on account of the erection, construction, addition to or repair of any part of said premises, or for or on account of any services, work, supplies or materials that may at any time be done or furnished in and upon or about the demised premises, or any part thereof. [411]

(f) Lessor or its agents shall have the right to go upon the demised premises at any and all times, and to inspect said premises, and each and every part thereof, being altered, repaired, erected, constructed or in course of construction, and to serve or post and keep posted thereon, or on any part thereof, any notices provided for by Section 1192 of the Code of Civil Procedure of the State of California, or any notice or notices that may at any time be proper, or that may be required or permitted by any other law.

(g) Lessee agrees that it will not permit any work of construction, addition, alteration or repair, or any other work that might cause any claim or lien to attach to said premises, or any part thereof, or any interest therein, to be commenced until and unless it has given written notice to Lessor of the contemplated commencement of such work, in order that Lessor may be afforded an opportunity to post the notices referred to in this Paragraph (f) hereof.

#### IX. Insurance

(a) Lessee agrees to, during the entire of the term hereof, maintain fire insurance upon the build-

ing now located on said demised premises, or which may hereafter be constructed upon or added to, or substituted for said building, and upon all appurtenances belonging thereto, in an ammount of not less than seventy (70) per cent of the actual value at the time such insurance is written on such building and all such additions thereto or substitutes therefor.

(b) Policies of insurance shall be so issued as to cover and insure all of the several interests of the owner of the premises herein demised, the holder of any mortgage or deed of trust against said premises, the Lessor and Lessee, and shall be so written that in case of loss or damage the proceeds of such insurance shall be and shall become payable to said parties as their interests may appear.

(c) Lessee agrees that it will, at its own cost and expense at all times during the term hereof, provide promptly and punctually pay all premiums demanded for all and any insurance policies whatsoever contemplated in this lease, and should Lessee fail to pay therefor, or fail to insure said premises, as herein provided, said Lessor shall have the right to insure the same in any company or companies that it may deem fit, and all said insurance shall be at the expense of said Lessee, and Lessee agrees to repay the cost thereof to Lessor all sums so expended on the first day of the calendar month ensuing after the date of such payment; and Lessee further agrees to maintain in full force and effect during the term hereof, any and every form of insurance that may

be required by any law, ordinance or governmental regulation to be carried or maintained by the owner of the demised premises, and also to require every [412] contractual performance and any work thereon under or by agreement with or permission of Lessee, to provide and maintain all insurance of any kind that may be required of it to be carried by it against injury to its employees, or against injury to other persons, or otherwise, and Lessee agrees to indemnify Lessor against, and save harmless from any liability, claim or expense, including costs and reasonable attorneys' fees which might accrue by reason of the failure of Lessee or of any of the other persons hereinbefore designated to provide and maintain such insurance.

In particular Lessee agrees that at all times during the term hereof it will maintain in full force and effect such policy or policies of insurance in such amounts and with such companies as may be approved by Lessor, insuring Lessor against claims of any nature whatsoever to persons or property arising out of or resulting from any accident occurring in or about, or by reason of the operation or construction of any elevator, escalator, boiler or other machinery or equipment now or hereafter in or about said premises. And Lessee agrees to hold Lessor harmless from any loss, claim or expenses whatsoever arising out of, or resulting from, the construction, maintenance or operation of any such elevator, escalator, boiler or other machinery or equipment, including the expense of opposing or de-



fending any claim that may be made, or any suit that may be instituted against Lessor, by reason thereof.

(d) Lessee agrees that it will not enter into any contract for the reconstruction of the building now standing upon said premises, or for the addition to or alteration or repair of such building until and unless the contractor or contractors undertaking such work shall be fully insured in an insurance carrier satisfactory to Lessor against any claim under the employer's liability and workmen's compensation act of the State of California, or any other law or statute of any other jurisdiction which may then be in force arising out of or resulting from any injury to or death of any person employed in or about the work covered by said contract.

(e) Lessee agrees to carry and maintain adequate riot or civil commotion insurance and public liability or accident insurance of all kinds, insuring against loss, damage or injury to person or property occurring on the premises or any part thereof or in the streets or on the sidewalks or alleys surrounding said premises due directly or indirectly in any manner whatsoever to the use of said premises.

(f) All policies of insurance affecting the Lessor herein or the Lessor's interest hereunder, shall be delivered to Lessor, it being understood that fire insurance policies covering Lessee's stock of merchandise, fixtures, furniture and the like, and compensation insurance and accident and liability insurance and insurance similar in nature thereto, need not



be delivered to the Lessor, but shall be retained by the Lessee. All such policies of insurance to be delivered to the Lessor hereunder shall be in companies acceptable to said Lessor. [413]

### X. Fire and Earthquake

(a) It is understood and agreed that the department store building now in existence and erected upon the herein demised premises consists of six stories and a basement. If at any time during the term hereof said building—to-wit, said building so consisting of six stories and a basement, without the addition thereto of any additional stories thereon—now standing upon the premises or any part thereof or any substitute therefor or addition thereto, be wholly or partially destroyed by fire, Lessor agrees to immediately reconstruct the same or make any necessary repairs thereon so as to place said building, or any part thereof so damaged or destroyed, as near as may be possible in the same condition as existed at the time of such destruction, damage or injury. The proceeds of any and all fire insurance policies shall be turned over to and used by Lessor for such reconstruction or repairs.

And whereas, under the provisions of paragraph VII hereof, Lessee is given the privilege of erecting an additional story or stories on the building now standing on the herein demised premises, it is now therefore, hereby agreed that in the event that at the time of such destruction or injury by fire there shall have been erected by Lessee an additional story or stories on the building hereby demised and such

additional story or stories shall be destroyed or injured by fire, Lessee is hereby given the privilege and option, either to reconstruct or repair such additional story or stories so injured or destroyed so as to place the same, as near as may be practicable in the same condition as existed at the time of such destruction or injury—and the proceeds of all fire insurance policies covering such additional story or stories shall be turned over to and used by Lessee for such reconstruction or repairs and any money that may be required to thus reconstruct or repair said additional story or stories in excess of the proceeds of said fire insurance policies covering the same, shall be expended for such purpose by Lessee out of its own funds,—or Lessee, if it so elects, may not reconstruct or repair such additional story or stories, but may retain the proceeds of all fire insurance policies covering the same and such proceeds shall be and belong to said Lessee—it being understood, however, in such latter event that the said building shall be completely roofed at the sole cost and expense of said Lessee.

(b) Whereas, Lessee is not obligated, under the terms of this lease to carry earthquake insurance on the building herein demised or any part thereof; now, [414] therefore, it is agreed, that in the event of any destruction or injury of the building now standing upon the herein demised premises or any part thereof or any substitute therefor, or addition thereto, by earthquake Lessee shall, at its own cost and expense, immediately repair or reconstruct

or make the necessary repairs thereon so as to place said building in the same condition as existed at the time of the execution of this lease.

(c) In no event shall such destruction or injury by such fire or earthquake, as aforesaid, be deemed to be a termination of this lease, but said lease shall continue in full force and effect, subject to partial suspension or diminution for the rent of said premises as hereinafter more fully defined, based upon the amount of time consumed in making said repairs and based upon the amount of space of which Lessee is deprived during the time when said repairs are being made, provided, however, that no suspension or diminution of rent shall be made on account of depriving Lessee of space in any additional stories that may be erected by Lessee upon the building now occupying the herein demised premises, it being understood that Lessee in the erection of said additional stories assumes the entire risk and responsibility therein and thereby. For the purpose of determining the proper amount of rent to be suspended or diminished, the average monthly rental shall be taken at the rate of Twenty Five Thousand Dollars (\$25,000) per month, but in any event no suspension or diminution of rent shall be made except on said basis of Twenty Five Thousand Dollars (\$25,000) per month, and Lessee shall at all times continue to pay monthly in advance on the first day of each and every calendar month the excess existing between the pro rata allowance of said sum of Twenty Five Thousand Dollars (\$25,000) and the

original monthly rental provided to be paid hereunder, to-wit: the sum of Forty three thousand one hundred forty eight dollars and forty four cents.

(d) No restoration, alteration or repair shall be required which, at the time, shall be contrary to any building ordinance or law of the City of Los Angeles, County of Los Angeles, or State of California.

(e) In no event shall Lessee be entitled to compensation or damages for or on account of or from any matter or thing arising out of, or resulting from, such destruction or damage, or for any annoyance or confusion in reconstructing the same, or making any repairs thereto, or otherwise, except [415] as expressly set forth in this Paragraph X.

(f) With reference to the maintenance of fire insurance by Lessee on the building herein demised, it is understood and agreed that if said Lessee should fail or neglect to maintain fire insurance on said building in the manner as hereinbefore provided for in Paragraph IX, and provided Lessor shall notify Lessee in writing to that effect, then and in that event Lessor shall not be obliged to make any repairs or improvements whatsoever, but the proceeds of any insurance policies shall be deposited for the use of Lessee, and Lessee shall then therewith reconstruct or repair said building in such a manner as to place the same in as good condition as it existed at the time of the execution of this lease, paying and bearing whatever excess may be required to effect such reconstruction over and above the amount of the proceeds of such insurance policies.



(g) In determining such diminution of rent based on loss of space, due consideration shall be given to the beneficial use and value of the space of which Lessee shall be so deprived.

And it is agreed that if the said parties cannot agree upon the amount of such diminution, then each shall, within ten (10) days after the occurrence of said casualty, appoint an arbitrator and if such two arbitrators cannot agree, they shall, within ten days thereafter, appoint a third arbitrator, and the decision of any two of said arbitrators shall be final and fix the amount of diminution to be allowed from said rent for such loss of beneficial use. Said Lessee shall, however, during said period pay the full rent called for by said Lease and shall receive credit for the amount that shall be so awarded, upon the next rental payment or payments that may become due after such award.

## XI. Notices and Demands

It is further agreed that whenever any notice or demand is required to be, or may be given, by either of the parties hereto, to the other or to their respective successors or assigns, service of such notices or demands shall in each and every instance be complete as to and upon said Lessor, its successors or assigns, by personally serving such notice or demand upon any officer of said Lessor, or by posting the same in the United States mails, postage prepaid thereon, addressed to said Lessor at such address as may from time to time be designated by Lessor;



and as to and upon said Lessee, its successors and assigns, then holding under and by valid assignment, by personally serving such notice or demand upon any officer of said Lessee, or by posting the same in the United States mails, postage prepaid thereon, addressed to said Lessee at No. 801 South Broadway, Los Angeles, California, or such other address in the City of Los Angeles as may be designated by Lessee. [416]

## XII. Assignments and Subleases.

(a) No assignment of this lease or of any interest therein by the Lessee, and no sublease of any interest by the Lessee shall be valid except upon the following terms and conditions, and no others, to wit:

Said Lessee is hereby given the right to make such subleases as are usual and customary in and about the operation of department stores for the purpose of establishing departments and concessions therein upon the condition, however, that at all times during the continuation of this lease—and so long as Lessee shall not have made any valid assignment thereof—said Lessee shall remain in the major possession and occupancy of said premises. It is understood and agreed that where—as provided for in Paragraph VI hereof—said premises are permitted to be used for other than department store uses, Lessee is given the right to sublet all or any part thereof for any of the uses specified in said Paragraph VI.

(b) In the event of any assignment of this lease in the manner as hereinafter provided, any such assignee of said Lessee is hereby given the same privileges with reference to subletting as are herein given to said Lessee, and in the event of any such assignment, said assignee shall remain in the major possession and occupancy of said premises.

(c) Said Lessee is hereby given the right to assign this lease to any corporation or to any person of the Caucasian race of good moral character and good financial responsibility; and said assignment shall not be valid until and unless said assignee shall assume and agree in writing for the use and benefit of the Lessor, to carry out, perform and be bound by each and all of the Lessee's agreements herein contained.

No interest of Lessee or of its successors or assigns, or of any of them, in this lease, or any interest therein, or in the demised premises, or any part thereof, shall be assignable or transferable, or assigned or transferred, by bankruptcy or insolvency or other similar operation of law. In no event shall this lease, or any interest therein, be or be deemed to be an asset of the estate of said Lessee, or its successors or assigns, or any of them, should they or any of them be adjudicated bankrupt or insolvent.

(d) Lessee agrees that it will not suffer or permit this lease, or any interest therein, or the demised premises or any part thereof, or any of the property of it, kept or allowed to be kept, or located in or

about the demised premises, to be held, kept, possessed, attached, levied or liened upon for a longer period than ten (10) days under any writ of attachment, writ of execution, or any other process or any other matter growing out of a suit or proceeding in [417] law or equity. Nor, will they, or any of them, commit any act of bankruptcy, or permit any adjudication of bankruptcy.

(e) No assignment whatever shall be made or attempted or suffered to be made by Lessee, its successors or assigns, if at the time of such attempted assignment said Lessee, or its successors or assigns, attempting to make such assignment be in default in the performance of any of its agreements herein contained.

(f) No assignment shall be made or effected except by an instrument in writing by the assignor and assignee, and an original duplicate of such assignment by the Lessee and the acceptance thereof by the assignee shall be furnished to Lessor before such assignment shall become valid.

(g) Any assignment purported or attempted to be made otherwise than in accordance with the provisions of this lease shall be voidable at the option of the Lessor, and any attempt to make or suffer or permit such assignment by Lessee, its successors or assigns, or to fail to keep all of the terms and agreements of this Paragraph XII, shall be and be deemed to be at the option of Lessor a breach of the conditions of this lease, and subject to all of the rights of Lessor to terminate the same as herein provided.

(h) No subletting or assignment shall in any manner whatsoever release the Lessee hereunder from any or all of the obligations by it to be performed under this lease, including the payment of the rentals provided to be paid hereunder and the faithful performance of all of the other terms and conditions hereof.

### XIII. Forfeiture For Default.

(a) Lessor shall not be required to give any notice of default or demand for possession, or any other demand or notice other than as herein provided. All sub-tenants or other persons claiming, or in possession of all or any part of the demised premises, under or through Lessee, shall be deemed to have waived any notice of default or demand of any kind whatsoever.

(b) In the event of any action in law or in equity to collect any rent which may become due hereunder, or to enforce any of the terms or conditions of this lease, or to recover damages for any breach thereof, or to terminate this lease by reason of any default on the part of Lessee, or to recover possession of the demised premises—Lessee will pay to Lessor if Lessor recover judgment against Lessee, such sum as may be judged reasonable as Lessor's attorneys' fees therein, and such additional fee may be included in and be a part of any judgment which may be so rendered.

(c) No waiver of any breach or any term or condition of this lease shall be construed as a waiver by Lessor of any subsequent breach of the same or of any other term or condition. [418]



(d) The several rights, remedies, elections, powers and options of Lessor contained in this lease shall be construed as cumulative and no one of them is exclusive of the others, nor of any other right or priority now or hereafter allowed by law.

(e) It is further understood and agreed by and between the parties hereto that the right given in this lease to the said Lessor to collect the rent that may be due under the terms of this lease by any proceedings under the same, or the right to collect any additional rent, moneys or payments due under the terms of this lease by any proceedings under the same, or the right herein given to the Lessor to enforce any of the terms and provisions of this lease shall not in any way affect the right of the Lessor to declare at its option this lease, or any sublease thereunder, or assignment or other transfer thereof void and terminated—and the term hereby created or any assignment or sublease thereunder or other transfer thereunder ended.

(f) All sums of money which are to be paid or repaid by Lessee to Lessor under any of the provisions of this lease shall be paid in gold coin of the United States of America of the present standard weight and fineness, and shall become due and payable unless otherwise specified herein with specific reference to a particular payment or class of payments immediately when any advance is made, or expense incurred by Lessor for any of the matters or things or under any of the foregoing provisions of this lease.



## XIV. Ownership of Building.

Lessor represents that the premises and the building located thereon is owned in fee simple by the Hamburger Realty Company, and that said premises are free and clear of all incumbrances excepting only that there exists against the same a Deed of Trust in the sum of approximately One Million Six Hundred Sixty Six Thousand Dollars (\$1,666,000). This lease is made subject to said deed of trust and subject to a certain lease by and between A. Hamburger & Sons, Incorporated as Lessor to the United States of America, as Lessee, recorded in Book 109, page 117 of Leases, records of Los Angeles County, to which record reference is hereby made for full particulars.

## XV. Time Is Essence of This Lease.

Time is expressly made the essence of this agreement, including particularly with reference to the prompt payment and discharge of all rents, claims, liens, taxes, assessments and like obligations.

In the event of a default by Lessee in any of the terms, covenants or conditions in this lease provided by it to be performed, Lessor shall serve written notice upon Lessee of such default, and Lessee shall have sixty (60) days thereafter within which to cure or correct such default. It is understood and agreed, however, that Lessee shall not be given said period of sixty (60) days within which to cure any default, which default is not subject to being cured or corrected. Interest on delayed rentals shall be

paid at the rate of seven per cent (7%) per annum and shall be paid on the next rent day succeeding such default. [419]

#### XVI. Miscellaneous Covenants.

(a) Should the Lessor elect to reenter and take possession of said premises under any one or more of the conditions described in this lease, said Lessor may, at its option, either terminate this lease and recover from the Lessee all damages caused by breach thereof by said Lessee, including all reasonable attorneys' fees which Lessor may be required to incur in recovering possession of said premises and in collecting said damages, or Lessor may, without terminating this lease, relet said premises or any part thereof for all or any part of the remainder of said term to a tenant or tenants satisfactory to it and at such rental as it may with reasonable diligence be able to secure, and should such rental be less than that hereinbefore agreed to be paid by Lessee, Lessee agrees to reimburse Lessor for any reasonable expenses which may be incurred by Lessor in reletting said premises and pay said Lessor monthly in advance upon the day of each calendar month when the rental herein provided to be paid becomes due and payable, the amount of any such deficiency in said rent. No reentry of said premises by Lessor as herein provided, shall be considered as an election on its part to terminate this lease unless written notice to that effect is delivered to Lessee.

(b) In no event, however, shall a termination or cancellation of this lease for any cause whatsoever, whether the partial or complete destruction of said premises—or for any other cause—and whether for any fault or default of Lessor, or otherwise—relieve Lessee from the payment of the rental herein reserved as to any amount of such rental in excess of the sum of Twenty Five Thousand Dollars, (\$25,000) per month, it being distinctly understood and agreed that if, for any reason at all, this lease is cancelled and terminated, Lessee shall continue during the remainder of the term hereof, to pay to Lessor monthly in advance on the first day of each and every calendar month, the sum of Eighteen Thousand One Hundred Forty Eight Dollars and Forty Four Cents and in addition thereto such proportion of said sum of Twenty Five Thousand Dollars (\$25,000) as may be legally due and owing under the terms hereof after any such cancellation or termination of this lease.

(c) Each and all of Lessee's agreements herein contained are conditions precedent, the performance of which shall be prerequisite within the option of the Lessor to the right of Lessee to remain in possession of the demised premises, or to have this lease continued in effect. Lessee covenants and agrees that upon the termination of this lease by the expiration of time or for any other reason, or in any other manner, it will surrender and deliver up the premises to Lessor in good order and condition excepting for such damage by fire, earth-

quake or other casualty, as Lessee is not required to repair under any of the provisions of this lease.

(d) It is covenanted and agreed that no waiver of a breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding breach, or of any other breach of the same or any other covenant thereof. [420]

(e) As part of the consideration for the execution of this lease, Lessor agrees and covenants that it will procure Hamburger Realty Company, the owner of the fee of the herein demised premises, to ratify and approve and consent to the execution of this lease, and said ratification, approval and consent of said Hamburger Realty Company shall be evidenced by the execution of the consent herein-after attached and made a part hereof.

(f) It is further agreed by and between all of the parties hereto that this lease and all the terms and conditions thereof shall bind—and inure to the benefit of—as the case may require—the parties hereto and their respective successors and assigns and all parties claiming through or under them.

## XVII.

And the said Lessee complying with all of the terms, conditions and covenants on its part to be kept and performed, shall have and enjoy the quiet and peaceful possession of the said demised premises according to the terms of this agreement.

In witness whereof, the said parties hereto have

duly caused these presents to be executed in their respective corporate names by their proper officers thereunto duly authorized, and have affixed their respective corporate seals thereto the day and year first above written—in duplicate.

A. HAMBURGER & SONS,  
INCORPORATED,

By M. A. HAMBURGER,  
Its President.

By OTTO SWEET,  
Its Secretary.

THE MAY DEPARTMENT  
STORES COMPANY,

By DAVID MAY,  
Chairman of its Executive  
Board.

By WILBUY D. MAY,  
Its Secretary-Treasurer. [421]

State of California,  
County of Los Angeles—ss.

On this 31st day of March in the year nineteen hundred and twenty three before me, Clara E. Olson, a Notary Public in and for the said County of Los Angeles, State of California, residing therein,



duly commissioned and sworn, personally appeared M. A. Hamburger, known to me to be the President, and Otto Sweet, known to me to be the Secretary of A. Hamburger & Sons, Incorporated, the Corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]                      CLARA E. OLSON,  
Notary Public in and for Los Angeles County, State  
of California.

State of California,  
County of Los Angeles—ss.

On this 31st day of March in the year nineteen hundred and twenty three before me, Clara E. Olson, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared David May, known to me to be the Chairman of its Executive Board, and Wilbur D. May, known to me to be the Treasurer of The May Department Stores Company the Corporation that executed the within instrument known to me to be the persons who executed the within instrument on behalf of

the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]                      CLARA E. OLSON,  
Notary Public in and for Los Angeles County, State  
of California.

The undersigned, Hamburger Realty Company, the owner of the premises described in the foregoing Lease by and between A. Hamburger & Sons, Incorporated, as Lessor, [422] and the May Department Stores Company, as Lessee, hereby ratifies, approves and consents to the execution of said lease and agrees to protect the leasehold of said The May Department Stores Company against any failure of the title of said A. Hamburger & Sons, Incorporated, and in the event of any such failure of the title for any reason whatsoever, agrees to execute and deliver to said The May Department Stores Company, a new lease exactly identical to the foregoing lease and for the same term and on the identical conditions.

And further covenants and warrants that, the said Lessee in said aforesaid Lease, complying with all of the terms, conditions and covenants on its part to be kept and performed, shall have and enjoy the quiet and peaceful possession of the said demised premises according to the terms of said Lease.

In witness whereof the undersigned has caused these presents to be executed in its corporate name

by its proper officers thereunto duly authorized, and has affixed its corporate seal hereto the day and year first above written.

HAMBURGER REALTY  
COMPANY,

By M. A. HAMBURGER,

By OTTO SWEET.

State of California,  
County of Los Angeles—ss.

On this 31st day of March, in the year nineteen hundred and twenty three before me, Clara E. Olson, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared M. A. Hamburger, known to me to be the Vice-President, and Otto Sweet, known to me to be the Secretary of the Hamburger Realty Company the Corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same. [423]

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

CLARA E. OLSON,  
Notary Public in and for Los Angeles County, State  
of California. [424]

## EXHIBIT 8

This Indenture of lease made and entered into at Los Angeles, California, this 30th day of March, 1923, by and between Hamburger Realty Company, a corporation organized and existing under the laws of the State of California, party of the first part, hereinafter designated as Lessor, and The May Department Stores Company, a corporation organized and existing under the laws of the State of New York, party of the second part, hereinafter designated as Lessee.

Witnesseth:

That said Lessor for and in consideration of the covenants and agreements hereinafter contained to be kept and performed by the Lessee, and in consideration of the rights herein reserved, does hereby lease and demise unto the said Lessee, and the said Lessee hereby takes and accepts from said Lessor all that certain real property with the building and appurtenances thereunto belonging, including the machinery, boilers and heating appliances therein contained, being situate in the City of Los Angeles, County of Los Angeles, State of California, and more particularly described as follows:

Lot C of re-subdivision of the portion of Block 52 of the Huber Tract, as per map recorded in Book 12, page 1, of Maps in the office of the County Recorder of Los Angeles County.

Also Lot 20 in Block 52 of the Huber Tract in the City of Los Angeles, County of Los An-

geles, State of California, as per map recorded in Book 2, Page 280, Miscellaneous Records of said County.

This lease is made for the term and upon the conditions, covenants and agreements hereinafter expressed; and said Lessor for itself, its successors and assigns, and said Lessee for itself, its successors and assigns, do hereby respectively agree to keep, observe and perform each and all of the conditions, covenants, provisions and agreements hereinafter provided to be kept, observed and performed by said Lessor and said Lessee, respectively, to-wit:

#### I. Term

The term of this lease shall be thirty (30) years, commencing on the 1st day of January, 1943, and ending on the 31st day of December, 1972. [425]

#### II. Rent

(a) The Lessee does hereby covenant and agree to pay to Lessor as rental for the said premises for the term hereof the sum of Nine Million Dollars (\$9,000,000), in monthly installments, payable in advance on the first day of each and every calendar month during the term hereof, said monthly installments to be in the sum of Twenty-five Thousand Dollars (\$25,000) each, commencing on the first day of January, 1943, as aforesaid.

#### III. Taxes and Assessments

(a) As a further consideration for the leasing and demising, as aforesaid, of the said premises to the said Lessee, the said Lessee covenants and agrees to bear, pay and discharge in addition to the rents



heretofore reserved herein, all taxes, assessments, levies, rates, duties, tolls, imposts and charges of every kind, nature and description, whether general or special, ordinary or extraordinary, which may at any time, or from time to time, during the term hereof, by or according to any law or governmental, legal, political or military order or authority whatsoever, directly or indirectly, be taxed, charged, levied, assessed or imposed upon or against, or which shall be or may be or become a lien upon this lease, or upon all or any part of the land, building or premises hereby leased, or any building, improvement or structure now located, or that may be hereafter located or built thereon, or any estate, right, title or interest of the Lessor and of the Lessee, or either of them, or of their respective successors or assigns in or to said demised premises, or said building, improvements or structure; including also all water rates, gas, electric, fuel and power rates which may be charged against said premises during the term hereof; provided, however, that if any of the following obligations or liabilities shall be or become such lien, the Lessee shall not be required to pay or discharge the same under the terms of this lease, to-wit:

1. Any corporation franchise tax or corporation licensee fees which may be levied upon or against the Lessor.
2. Any tax which may be levied by the United States of America, or the State of California, upon or against the income, profits or capital stock of the Lessor, or any inheritance tax.

3. Any taxes which may be levied upon or against any real property of the Lessor other than the real property described in this lease.

The said Lessee further covenants and agrees to deliver to Lessor tax receipts of all taxes, assessments, and charges hereinbefore referred to, showing the payment of all taxes and assessments of every kind, nature and description whatsoever that shall have been levied or imposed upon said premises, or any part thereof, during the term hereof.

(b) The land, buildings and improvements covered and affected by this lease shall always be assessed for the purposes of taxation in the name of the Lessor, and Lessee agrees at all proper times to make and file the necessary statements with the proper taxation authorities so that hereafter the whole of the premises hereby demised will be assessed in the name of said Lessor during the entire period of the term hereof.

#### IV. Building

It is understood and agreed that said Lessee has examined and knows the contents and condition of the premises herein demised, and it is hereby acknowledged that no statements, warranties or representations of any kind whatsoever regarding the present or future condition of said premises have been made by Lessor to Lessee except as are herein specifically set forth, and it is agreed that said premises are now in good condition and repair, and said Lessee hereby accepts the same in their present condition, and hereby agrees to accept the same in their condition existing at the time of the commencement of the term hereof.

## V. Upkeep and Repair

It is further understood and agreed that Lessor is not bound to keep said premises in repair, and that said Lessee shall make all repairs in and about said premises, and said Lessee agrees to keep the same in good condition and repair during the entire term hereof, and at the end of the term hereof, or at any sooner termination, to quit, surrender and deliver the possession of the herein demised premises to said Lessor in as good condition as exists at the date hereof, ordinary use and damages by the elements excepted. In case Lessee fails to keep said premises in repair, Lessor shall have the right to enter in or upon said demised premises, or to make any and all repairs necessary or proper to protect or preserve said premises, and all said repairs so made shall be at the expense of said Lessee, and said Lessee hereby agrees to repay to said Lessor any expense so incurred upon the first day of the calendar month succeeding the making of said repairs.

## VI. Use of Premises and Indemnity

(a) Lessee is hereby given the right to assign or sublet the whole or any part of the herein demised premises for any lawful use so long as said use is of such a character as not to injure the reputation of the premises or the sale value or rental value thereof. Lessee covenants and agrees that it will not use, or permit any other person or persons to use said demised premises, or any part thereof, in any manner or for any purpose in violation of any of the laws of the United States or of the State of

California, or of any Ordinances of the City of Los Angeles, or of any rule [427] or regulation of any Board, Commission or other Municipal or Governmental agency affecting said premises or the use thereof; and not to use said premises, or any part thereof, so as to constitute a public nuisance, or a nuisance to the owners of adjoining or neighboring property, or to maintain any nuisance on said premises, or for any other use whatsoever that would tend to injure the reputation or rental or other value of said premises; that it will not use said premises, or any part thereof, for any purpose or in any manner, or do or permit to be done thereon, or suffer to be done, any set or thing whatsoever that will violate any policy of insurance, or suspend or render inoperative any policy of fire or rent insurance now or hereafter, during the term hereof, earned on the whole or any part of said demised premises, and particularly that it will not keep, or suffer or permit to be kept, on said demised premises any gasoline, distillate or other petroleum product for use for heating, lighting, or other purpose, or that may be extra hazardous, without first obtaining the written consent of all insurance companies carrying fire or rent insurance upon said premises, or any part thereof. It is further agreed that Lessee shall conform to all laws, ordinances, rules and regulations affecting said premises, and the sidewalks and streets and alleys in front of or around said premises; that it will keep and save harmless said Lessor from any damage or penalty or charges imposed for violation of any of said laws



occasioned by the use, misuse or neglect of said Lessee, or of any tenants or tenants holding under it, and of all other persons occupying said premises.

(b) It is further agreed that said Lessor shall not be liable for any damage of any kind occasioned by failure to keep said premises in repair during the term hereof, and shall not be liable to the said Lessee, or to anyone else, for or on account of any damage or injury done or occasioned by or from the use, misuse or neglect of the herein demised premises, or from the condition of said premises or the plumbing, gas, water, steam or other pipes or sewage, or in any other way or manner growing out of the present, past or future condition of said premises, nor on account of the elevators, escalators, engines or machinery of said building, or for accidents, injuries or damages in or about the portion thereof, or otherwise; and it is further agreed that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage or expense arising out of any action or other occurrence causing injury to any person or property whatsoever due directly or indirectly to the use of said premises, or any part thereof, by said Lessee or any person or persons holding under it or in its employment, or otherwise using said premises, including damage or injury to any person or property occurring on said premises or in the streets, sidewalks or alleys surrounding said premises, due directly or indirectly to the use of said premises, and to carry adequate accident insurance covering the same. [428]



## VII. Improvements or Additions to the Building

(a) Lessee is hereby given the right to erect additional stories on the building hereby demised so long as the erection of said additional stories is not in violation of any building ordinances or regulations of the City of Los Angeles, provided that before the erection of such additional stories Lessee shall first obtain the written approval of the Lessor, or of the architect of Lessor, of the plans and specifications for such additional stories, provided, however, that such approval shall not be unreasonably withheld. Such additional stories and any other alterations in, or additions to, the building now standing on said premises, shall be entirely at Lessee's own cost and expense, and any such additional stories, additions or alterations shall immediately be and become a part of the realty, and shall be and remain the property of the Lessor, but any trade fixtures placed by Lessee in or about said premises at any time during the term hereof may be removed therefrom by Lessee at or prior to the expiration of the term hereof, unless said Lessee be in default in any of the terms hereof, upon condition, however, that Lessee shall immediately repair any and all damage caused to said demised premises, or any part thereof, by the removal of any such trade fixtures.

(b) Any changes, repairs, alterations or improvements in the herein demised building other than the erection of additional stories thereon may be made by Lessee at its own cost without the approval of said Lessor, upon the express restriction

and condition, however, that such changes, repairs, alterations or improvements shall be of such a character as not to weaken or impair the structural strength of said building.

#### VIII. Mechanics' and Other Liens

(a) All of the provisions of this lease relating to mechanics' or other liens, and all of the obligations of Lessee with reference thereto, shall apply not only to the building now standing upon the demised premises, but to every substitute therefor and replacement thereon, and to any and all repairs, additions, restorations and work that may be done or caused to be done at any time by Lessee in or upon the demised premises, or any building or structure standing thereon.

Lessee covenants and agrees to keep the demised premises and all buildings thereon, and every part thereof and interest therein, free and clear of mechanics' liens and other liens for labor, services, supplies, equipment or materials, and agrees that at all times it will fully pay and discharge and wholly protect and save harmless Lessor, and the right, title, and interest of Lessor, and its successors and assigns in and to said premises, and the whole thereof, from any and all demands or claims which [429] may or could ripen into such liens, and from any such liens, and from any attorneys' fees and costs and expenses which may be incurred by Lessor or by Lessee by reason of or on account of any such lien or claims, or the assertion or filing thereof. Should Lessee fail to pay off and fully discharge any such liens or claims within thirty (30)

days after the same have attached to said property, or to any interest therein, Lessor at its option may pay, adjust or compromise the same, or any portion thereof, in any such manner as it may elect, and in so doing Lessor shall be and remain the sole judge of the legality of such lien or claim, and the validity thereof, to the full amount of such payment, adjustment or compromise provided, however, that if Lessee desires to do so, it may contest any such claim or lien upon giving written notice to Lessor within said period of thirty (30) days of its intention so to do. In the event that said contest be made and litigation should ensue, then within ten (10) days after the entry of any final judgment which may be recovered in any such action against said Lessor or against said Lessee, or either of them, or against said premises or against any part thereof, or any interest therein, Lessee shall pay and fully discharge said judgment; and in the event that Lessee fails or neglects so to do, Lessor may make such payment, or adjust or compromise such claim or judgment in such manner as it may elect. In the event of any such litigation at all times after entry of any judgment, and pending the final determination of such litigation, Lessee by proper orders of Court or by deposit of money, or by a good and sufficient undertaking, or otherwise, as may be required or permitted by law, shall wholly stay and keep wholly stayed any execution of any such judgment, and of every part thereof, that may be rendered or entered in said litigation against said Lessor or said Lessee, or against any estate or interest

or either of them in or to said leased premises or any buildings or improvements thereon; and if such stay of execution should not be accomplished, or if the same shall not be preserved at all times as aforesaid, Lessor at any time after the ten (10) days' written notice to the Lessee of its intention so to do, may compromise and cause any judgment to be satisfied and discharged upon such terms and conditions, as the Lessor may deem fit.

(b) In any event whatsoever Lessor shall have the right, at its option, to redeem the leased premises and the buildings and improvements thereon, or any part thereof, or any and every estate, right, title and interest therein, from any and all sale under any judgment or any foreclosure of any mechanics' lien or lien of like nature, without any notice whatsoever to said Lessee.

Lessee agrees to pay to Lessor and to reimburse it for all moneys which it may pay out in discharge of any such claims, liens or judgment, or for any redemption from any said sale, and for all reasonable attorneys' fees, costs and expenses which may be incurred by Lessor by reason or on account of the same; and all such sums of [430] money shall be repaid by Lessee to Lessor on or before the first day of the calendar month ensuing after the same shall have been expended by Lessor.

(c) The payment by Lessor of any such claim, lien or judgment in the manner above described, or the payment and making of any such redemption in the manner above described, shall, as between the parties hereto, be deemed to be conclusive evi-



dence of the validity of such claim, lien, judgment or sale, and of the regularity of all acts and proceedings relative thereto, to the extent of the full amount expended by the Lessor therein or therefor.

(d) Lessee shall give notice promptly and in writing to Lessor as soon as it receives any information of any claim, lien or suit affecting the premises hereby demised, or any part thereof, or any interest therein.

(e) It is agreed between the parties hereto, and notice to whom it may concern is hereby given by Lessor, that Lessor shall not, nor shall its successors or assigns, nor shall any part of the premises herein demised, or of any interest therein or thereto, be or become liable for or on account of any lien or liens, or claim or claims, that may be asserted or filed for or on account of the erection, construction, addition to or repair of any part of said premises, or for or on account of any services, work, supplies or materials that may at any time be done or furnished in and upon or about the demised premises, or any part thereof.

(f) Lessor or its agents shall have the right to go upon the demised premises at any and all times, and to inspect said premises, and each and every part thereof, being altered, repaired, erected, constructed or in course of construction, and to serve or post and keep posted thereon, or on any part thereof, any notices provided for by Section 1192 of the Code of Civil Procedure of the State of California, or any notice or notices that may at any time be proper, or that may be required or permitted by any other law.



(g) Lessee agrees that it will not permit any work of construction, addition, alteration or repair, or any other work that might cause any claim or lien to attach to said premises, or any part thereof, or any interest therein, to be commenced until and unless it has given written notice to Lessor of the contemplated commencement of such work, in order that Lessor may be afforded an opportunity to post the notices referred to in this Paragraph (f) hereof.

### IX. Insurance

(a) Lessee agrees to, during the entire of the term hereof, maintain fire insurance upon the building now located on said demised premises, or which may hereafter be constructed upon or added to, or substituted for said building, and upon all appurtenances belonging thereto, in an amount of not less than seventy per cent (70%) of the actual value at the time such insurance is written on such building and all such additions thereto or substitutes therefor.

(b) Policies of insurance shall be so issued as to cover and insure all of the several interests of the Lessor, the Lessee, and the holder of any mortgage or deed of trust against said premises, and shall be so written that in case of loss or damage the proceeds of such insurance shall be and shall become payable to such parties as their interests may appear.

(c) Lessee agrees that it will at its own cost and expense at all times during the term hereof, provide, promptly and punctually pay all premiums

demande for all and any insurance policies whatsoever contemplated in this lease, and should Lessee fail to pay therefor, or fail to insure said premises, as herein provided, said Lessor shall have the right to insure the same in any company or companies that it may deem fit, and all said insurance shall be at the expense of said Lessee, and Lessee agrees to repay the cost thereof to Lessor all sums so expended on the first day of the calendar month ensuing after the date of such payment; and Lessee further agrees to maintain in full force and effect during the term hereof any and every form of insurance that may be required by any law, ordinance or governmental regulation to be carried or maintained by the owner of the demised premises, and also to require every contractual performance and any work thereon under or by agreement with or permission of Lessee, to provide and maintain all insurance of any kind that may be required of it to be carried by it against injury to its employees, or against injury to other persons, or otherwise, and Lessee agrees to indemnify Lessor against, and save harmless from any liability, claim or expense, including costs and reasonable attorneys' fees which might accrue by reason of the failure of Lessee or of any of the other persons hereinbefore designated to provide and maintain such insurance.

In particular Lessee agrees that at all times during the term hereof, it will maintain in full force and effect such policy or policies of insurance in such amounts and with such companies as may be approved by Lessor, insuring Lessor against claims

of any nature whatsoever to persons or property arising out of or resulting from any accident occurring in or about, or by reason of the [432] operation or construction of any elevator, escalator, boiler, or other machinery or equipment, now or hereafter in or about said premises. And Lessee agrees to hold Lessor harmless from any loss, claim or expense whatsoever arising out of, or resulting from, the construction, maintenance or operation of any such elevator, escalator, boiler or other machinery or equipment, including the expense of opposing or defending any claim that may be made, or any suit that may be instituted against Lessor by reason thereof.

(d) Lessee agrees that it will not enter into any contract for the reconstruction of the building now standing upon said premises, or for the addition to or alteration or repair of such building until and unless the contractor or contractors undertaking such work shall be fully insured in an insurance carrier satisfactory to Lessor against any claim under the employer's Liability and Workmen's Compensation Act of the State of California, or any other law or statute of any other jurisdiction which may then be in force arising out of or resulting from any injury to or death of any person employed in or about the work covered by said contract.

(e) Lessee agrees to carry and maintain adequate riot or civil commotion insurance, and public liability or accident insurance of all kinds insuring against loss, damage or injury to personal property occurring on the premises or any part thereof or

in the streets or on the sidewalks or alleys surrounding said premises due directly or indirectly in any manner whatsoever to the use of said premises.

(f) All policies of insurance affecting the Lessor herein or the Lessor's interest hereunder shall be delivered to the Lessor, it being understood that fire insurance policies covering Lessee's stock of merchandise, fixtures, furniture and the like and\* compensation insurance and insurance similar in nature thereto need not be delivered to the Lessor but shall be retained by the Lessee. All such policies of insurance to be delivered to the Lessor hereunder shall be in companies acceptable to said Lessor.

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\*Accident and liability insurance and (M.A.H. & W.D.M.)

#### X. Fire and Earthquake

(a) It is understood and agreed that the department store building now in existence and erected upon the herein demised premises consists of six stories and a basement. If at any time during the first twenty-five (25) years of the term hereof said building—to-wit, said building so consisting of six stories and a basement, without the addition thereto of any additional stories thereon—now standing upon the premises or any part thereof or any substitute therefor or addition thereto, be wholly or partially destroyed by fire, Lessor agrees to immediately reconstruct [433] the same or make any necessary repairs thereon so as to place said building, or any part thereof so damaged or destroyed, as near as may be possible in the same condition as existed at the time of such destruction.\* The pro-

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\*Damage or injury. (M.A.H. & W.D.M.)



ceeds of any and all fire insurance policies shall be turned over to and used by Lessor for such reconstruction or repairs.

And whereas, under the provisions of paragraph VII hereof, Lessee is given the privilege of erecting an additional story or stories on the building now standing on the herein demised premises, it is now therefore hereby agreed that in the event that at the time of such destruction or injury by fire there shall have been erected by Lessee an additional story or stories on the building hereby demised, and such additional story or stories shall be destroyed or injured by fire, Lessee is hereby given the privilege and option, either to reconstruct or repair such additional story or stories so injured or destroyed so as to place the same, as near as may be practicable in the same condition as existed at the time of such destruction or injury; and the proceeds of all fire insurance policies covering such additional story or stories shall be turned over to and used by Lessee for such reconstruction or repairs and any money that may be required to thus reconstruct or repair said additional story or stories in excess of the proceeds of said fire insurance policies covering the same, shall be expended for such purpose by Lessee out of its own funds, or Lessee if it so elects may not reconstruct or repair such additional story or stories, but may retain the proceeds of all fire insurance policies covering the same and such proceeds shall be and belong to said Lessee—it being understood, however, in such latter event that the said building shall be completely roofed at the sole cost and expense of said Lessee.



(b) Whereas, Lessee is not obligated, under the terms of this lease to carry earthquake insurance on the building herein demised or any part thereof; now therefore it is agreed that in the event of any destruction or injury during the first twenty-five (25) years of the term hereof, of the building now standing upon the herein demised premises or any part thereof or any substitute therefor, or addition thereto, by earthquake, Lessee shall, at its own cost and expense, immediately repair or reconstruct or make the necessary repairs thereon so as to place said building in the same condition as existed at the time of the execution of this lease.

(c) In no event shall such destruction or injury by such fire or earthquake, during the first twenty-five (25) years of the term hereof, as aforesaid, be deemed to be a termination of this lease, but said lease shall continue in full force and effect, subject to partial suspension or diminution for the rent of said premises as hereinafter more fully defined, based upon the amount of time consumed in making said repairs and based upon the amount of space of which Lessee is deprived during the time when said repairs are being made—and all based upon the monthly rental of Twenty-five Thousand Dollars (\$25,000) per month—provided, [434] however, that no suspension or diminution of rent shall be made on account of depriving Lessee of space in any additional stories that may be erected by Lessee upon the building now occupying the herein demised premises, it being understood that Lessee, in the

erection of said additional stories assumes the entire risk and responsibility therein and thereby.

(d) If at any time during the last five (5) years of the term hereof, the building then standing on the herein demised premises or any part thereof, be wholly or partially destroyed by fire or earthquake or other action of the elements and such damage, injury or destruction cannot be repaired within one hundred (100) working days, then and in that event Lessor is hereby given the right and option to either terminate this lease as of the date of such damage, destruction or injury, or to continue this lease in full force and effect. In the event that Lessor does not exercise its said option to terminate this lease, then said building shall be reconstructed or repaired in the same manner and to the same extent and at the cost or expense of the same parties as though said destruction or injury had occurred during the first twenty-five (25) years of the term hereof and subject to the same diminution or suspension of rent as though said damage, destruction or injury had occurred during said first twenty-five (25) year period. If said damage, injury or destruction can be repaired within one hundred (100) working days, then said building shall likewise be reconstructed or repaired in the same manner and to the same extent as though said destruction or injury had occurred during the first twenty-five (25) years of the term hereof and subject to the same diminution or suspension of rent as though said damage, destruction or injury had occurred during said first twenty-five (25) year period.

(e) No restoration, alteration or repair shall be required which, at the time, shall be contrary to any building ordinance or law of the City of Los Angeles, County of Los Angeles, or State of California.

(f) In no event shall lessee be entitled to compensation or damages for or on account of or from any matter or thing arising out of, or resulting from, such destruction or damage, or for any annoyance or confusion in reconstructing the same, or making any repairs thereto, or otherwise, except as expressly set forth in this Paragraph X.

(g) With reference to the maintenance of fire insurance by Lessee on the building herein demised, it is understood and agreed that if said Lessee should fail or neglect to maintain fire insurance on said building in the manner as hereinbefore provided for in Paragraph IX, and provided Lessor shall notify Lessee in writing to that effect, then and in that event Lessor shall not be obliged to make any repairs or improvements whatsoever, but the proceeds of any insurance policies shall be deposited for the use of Lessee, and Lessee shall then therewith reconstruct or repair said building in such a manner as to place the same in as good condition as it existed at the time of the execution of [435] this lease, paying and bearing whatever excess may be required to effect such reconstruction over and above the amount of the proceeds of such insurance policies.

(h) In determining such diminution of rent based on loss of space, due consideration shall be given to the beneficial use and value of the space of which Lessee shall be so deprived.

And it is agreed that if the said parties cannot agree upon the amount of such diminution, then each shall, within ten (10) days after the occurrence of said casualty, appoint an arbitrator and if such two arbitrators cannot agree, they shall, within ten days thereafter, appoint a third arbitrator, and the decision of any two of said arbitrators shall be final and fix the amount of diminution to be allowed from said rent for such loss of beneficial use. Said Lessee shall, however, during said period pay the full rent called for by said lease and shall receive credit for the amount that shall be so awarded, upon the next rental payment or payments that may become due after such award.

#### XI. Notices and Demands

It is further agreed that whenever any notice or demand is required to be, or may be given, by either of the parties hereto to the other or to their respective successors or assigns, service of such notices or demands shall in each and every instance be complete as to and upon said Lessor, its successors or assigns, by personally serving such notice or demand upon any officer of said Lessor, or by posting the same in the United States mails, postage prepaid thereon, addressed to said Lessor at such address as may from time to time be designated by Lessor; and as to and upon said Lessee, its successors or assigns then holding under and by valid assignment, by personally serving such notice or demand upon any officer of said Lessee, or by posting the same in the United States mail, postage prepaid thereon, addressed to said Lessee at No. 801 South



Broadway, Los Angeles, California, or such other address in the City of Los Angeles, as may be designated by Lessee.

## XII. Assignments and Subleases

(a) Said Lessee is hereby given the right to sublet or assign the whole or any part of this lease to any corporation or to any person of the Caucasian race of good moral character and good financial responsibility, so long as such subletting or assigning shall be for any first class lawful use which will not injure the reputation of the premises or injure the sale value or rental value thereof; and said assignment shall not be valid until and unless said assignee shall assume and agree in writing for the use and benefit of the Lessor, to carry out, perform and be bound by each and all of the Lessee's agreements herein contained. [436]

No interest of Lessee or of its successors or assigns, or of any of them, in this lease, or any interest therein, or in the demised premises, or any part thereof, shall be assignable or transferable, or assigned or transferred, by bankruptcy or insolvency or other similar operation of law. In no event shall this lease, or any interest therein, be or be deemed to be an asset of the estate of said Lessee, or its successors or assigns, or any of them, should they or any of them be adjudicated bankrupt or insolvent.

(b) Lessee agrees that it will not suffer or permit this lease, or any interest therein, or the demised premises or any part thereof, or any of the



property of it, kept or allowed to be kept, or located in or about the demised premises, to be held, kept, possessed, attached, levied or liened upon for a longer period than ten (10) days under any writ of attachment, writ of execution, or any other process or any other matter growing out of a suit or proceeding in law or equity. Nor will they, or any of them, commit any act of bankruptcy, or permit any adjudication of bankruptcy.

(c) No assignment whatever shall be made or attempted or suffered to be made by Lessee, its successors or assigns, if at the time of such attempted assignment said Lessee, or its successors or assigns, attempting to make such assignment be in default in the performance of any of its agreements herein contained.

(d) No assignment shall be made or effected except by an instrument in writing by the assignor and assignee, and an original duplicate of such assignment by the Lessee and the acceptance thereof by the assignee shall be furnished to Lessor before such assignment shall become valid.

(e) Any assignment purported or attempted to be made otherwise than in accordance with the provisions of this lease shall be voidable at the option of the Lessor, and any attempt to make or suffer or permit such assignment by Lessee, its successors or assigns, or to fail to keep all of the terms and agreements of this Paragraph XII shall be and be deemed to be at the option of Lessor a breach of the condition of this lease, and subject to all of the rights of Lessor to terminate the same as herein provided.

(f) No subletting or assignment shall in any manner whatsoever release the Lessee hereunder from any or all of the obligations by it to be performed under this lease, including the payment of the rentals provided to be paid hereunder and the faithful performance of all of the other terms and conditions hereof.

### XIII. Forfeiture for Default

(a) Lessor shall not be required to give any notice of default or demand for possession, or any other demand [437] or notice other than as herein provided. All subtenants or other persons claiming, or in possession of all or any part of the demised premises, under or through Lessee, shall be deemed to have waived any notice of default or demand of any kind whatsoever.

(b) In the event of any action in law or in equity to collect any rent which may become due hereunder, or to enforce any of the terms or conditions of this lease, or to recover damages for any breach thereof, or to terminate this lease by reason of any default on the part of Lessee, or to recover possession of the demised premises—Lessee will pay to Lessor if Lessor recover judgment against Lessee, such sum as may be judged reasonable as Lessor's attorneys' fees therein, and such additional fee may be included in and be a part of any judgment which may be so rendered.

(c) No waiver of any breach or any term or condition of this lease shall be construed as a waiver by Lessor of any subsequent breach of the same or of any other term or condition.

(d) The several rights, remedies, elections, pow-

ers and options of Lessor contained in this lease shall be construed as cumulative and no one of them is exclusive of the others, nor of any other right or priority now or hereafter allowed by law.

(e) It is further understood and agreed by and between the parties hereto that the right given in this lease to the said Lessor to collect the rent that may be due under the terms of this lease by any proceedings under the same, or the right to collect any additional rent, monies or payments due under the terms of this lease by any proceedings under the same, or the right herein given to the Lessor to enforce any of the terms and provisions of this lease shall not in any way affect the right of the Lessor to declare at its option this lease, or any sublease thereunder, or assignment or other transfer thereof void and terminated—and the term hereby created or any assignment or sublease thereunder or other transfer thereunder ended.

(f) All sums of money which are to be paid or repaid by Lessee to Lessor under any of the provisions of this lease shall be paid in gold coin of the United States of America of the present standard weight and fineness, and shall become due and payable unless otherwise specified herein with specific reference to a particular payment or class of payments immediately when any advance is made, of expense, incurred by Lessor for any of the matters or things or under any of the foregoing provisions of this lease.

#### XIV. Ownership of Building

Lessor represents that the premises and the building located thereon are owned in fee simple by the

Lessor, and that said premises are free and clear of all incumbrances excepting only that at the date hereof there exists against the same a Deed of Trust in the sum of approximately One [438] Million Six Hundred Sixty-six Thousand Dollars (\$1,666,000), and a lease to the United States of America recorded in Book 109, Page 117, of Leases, records of Los Angeles County, and reference thereto is hereby made.

#### XV. Time Is Essence of This Lease

Time is expressly made the essence of this agreement, including particularly with reference to the prompt payment and discharge of all rents, claims, liens, taxes, assessments and like obligations.

In the event of a default by Lessee in any of the terms, covenants and conditions in this lease provided by it to be performed, Lessor shall serve written notice upon Lessee of such default, and Lessee shall have sixty (60) days thereafter within which to cure or correct such default. It is understood and agreed, however, that Lessee shall not be given said period of sixty (60) days within which to cure any default, which default is not subject to being cured or corrected. Interest on delayed rentals shall be paid at the rate of seven per cent (7%) per annum and shall be paid on the next rent day succeeding such default.

#### XVI. Miscellaneous Covenants

(a) Should the Lessor elect to re-enter and take possession of said premises under any one or more of the conditions described in this lease, said Lessor may, at its option, either terminate this lease



and recover from the Lessee all damages caused by breach thereof by said Lessee, including all reasonable attorney's fees which Lessor may be required to incur in recovering possession of said premises and in collecting said damages, or Lessor may, without terminating this lease, relet said premises or any part thereof for all or any part of the remainder of said term to a tenant or tenants satisfactory to it and at such rental as it may with reasonable diligence be able to secure, and should such rental be less than that hereinbefore agreed to be paid by Lessee, Lessee agrees to reimburse Lessor for all reasonable expenses which may be incurred by Lessor in reletting said premises and pay said Lessor monthly in advance upon the day of each calendar month when the rental herein provided to be paid becomes due and payable, the amount of any such deficiency in said rent. No re-entry of said premises by Lessor as herein provided shall be considered as an election on its part to terminate this lease unless written notice to that effect is delivered to Lessee.

(b) Each and all of Lessee's agreements herein contained are conditions precedent, the performance of which shall be prerequisite within the option of the Lessor to the right of Lessee to remain in possession of the demised premises, or to have this lease continued in effect. Lessee covenants and agrees that upon the termination of this lease by the expiration of time or for any other reason, or in any other manner, it will surrender and deliver up the [439] premises to Lesser in good order and condition ex-



cepting for such damage by fire, earthquake or other casualty, as Lessee is not required to repair under any of the provisions of this lease.

(c) It is recovenanted and agreed that no waiver of a breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding breach, or of any other breach of the same or any other covenant thereof.

#### XVII.

And the said Lessee complying with all of the terms, conditions and covenants on its part to be kept and performed, shall have and enjoy the quiet and peaceful possession of the said demised premises according to the terms of this agreement.

#### XVIII.

It is understood and agreed that this lease and the rights given to Lessee hereunder are to take effect on the 1st day of January, 1943, upon the express condition that the Lessee hereunder, or its successors or assigns holding under valid assignment are in the lawful possession and occupancy of the herein demised premises on December 31, 1942, under that certain lease dated contemporaneously herewith by and between A. Hamburger & Sons, Incorporated, as Lessor therein and The May Department Stores Company as Lessee therein, the term whereof commences on January 1, 1923, and ends on December 31, 1942. In the event that Lessee is not in the lawful possession and occupancy of said premises on said 31st day of December, 1942, then and in that event no rights shall pass hereunder and

this lease shall, at the option of Lessor, be and become null and void for any and all purposes whatsoever.

### XIX.

It is further agreed by and between all of the parties hereto that this lease and all the terms and conditions thereof shall bind—and inure to the benefit of—as the case may require—the parties hereto and their respective successors and assigns, and all parties claiming through or under them.

In Witness Whereof, the said parties hereto have duly caused these presents to be executed in their respective corporate names by their respective\* thereunto duly authorized, and have affixed their respective corporate seals thereto the day and year first above written—in duplicate.

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\*Proper officers.

HAMBURGER REALTY  
COMPANY.

By M. A. HAMBURGER, ESQ.,  
Its Vice President.

By OTTO SWEET,  
Its Secretary.

THE MAY DEPARTMENT  
STORES COMPANY.

By DAVID MAY,  
Chairman of Its Executive  
Board.

By WILBUR D. MAY,  
Its Treasurer. [440]

State of California,  
County of Los Angeles—ss.

On this 31st day of March, in the year nineteen hundred and twenty three before me, Clara E. Olson, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared M. A. Hamburger, known to me to be the Vice-President, and Otto Sweet, known to me to be the Secretary of Hamburger Realty Company, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]                      CLARA E. OLSON,  
Notary Public in and for Los Angeles County, State  
of California.

State of California,  
County of Los Angeles—ss.

On this 31st day of March, in the year nineteen hundred and twenty-three before me, Clara E. Olson, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared David May, known to me to be the Chairman of its Executive Board, and Wilbur D. May, known to me

to be the Treasurer of The May Department Stores Company, the Corporation that executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]                      CLARA E. OLSON,  
Notary Public in and for Los Angeles County, State  
of California.

### EXHIBIT 9

#### Moody's Manual of Investments

#### 3. F. & R. Lazarus & Co. 4%-4 $\frac{1}{4}$ % notes:

Authorized—\$3,250,000; outstanding, Sept. 30, 1940, \$2,930,256. All held by Equitable Life Assurance Society of the U. S.

Dated—Jan. 31, 1939.

Maturity—Jan. 31, 1964.

Interest Payable—At rate of 4% per annum for first 10 years and at rate of 4 $\frac{1}{4}$ % per annum for next 15 years.

Repayments—The loan is to be paid in monthly installments as follows: First 23 months, interest only; 24th month, \$14,610 to include interest and a payment of principal; 25th month and each month thereafter, \$17,500 to include interest and principal. At end of 25th year, the entire unpaid balance of principal and interest, if any, shall be due and payable. Each installment includes interest on un-

paid balance of principal for preceding month. The balance is to be applied on account of principal of loan and with privilege of company to prepay additional amounts on account of principal on any interest date, not to exceed 5% of original principal amount of loan in any one year, without charge and additional amounts in excess of 5% if paid during first 5 years, 2½% during second 5 years and decreasing ½% per annum each year thereafter to and at par in 15th year and thereafter.

Secured—By a mortgage on real estate located on High, Town, Front and Chapel Streets, Columbus, O., formerly held by company under lease from Huntington National Bank, Columbus, O.

Purpose—Issued to acquire fee simple and leasehold estates in Columbus, O., and to retire land trust certificates formerly outstanding.

Capital Stock: 1. F. & R. Lazarus & Co. 4¾% cumulative preferred; par \$100:

Authorized—And outstanding, Dec. 31, 1940, 28,365 shares; par \$100. All owned by Federated Department Stores.

Preferences—Has preference as to assets and dividends.

Callable—On or before Oct. 1, 1942 at 105, thereafter and on or before Oct. 1, 1944 at 105 less ½ for each full year elapsed after Oct. 1, 1942, and thereafter at 104.

Other Provisions—The company shall acquire on or before June 1 of each year beginning 1938 the greater of (a) a number of shares of such stock the cost of which to the company, exclusive of accrued



dividends, is \$30,000, or (b) a number of shares of such stock the cost of which to the company, exclusive of accrued dividends, is an amount equal to 4% of the consolidated net earnings after taxes of the company and its subsidiaries in the preceding fiscal year after deducting dividends on such stock during such year whether or not paid.

Dividends Paid—Regular dividends paid.

2. F. & R. Lazarus & Co. common; no par:

Authorized—500,000 shares; outstanding 370,000 shares; no par. Federated Dept. Stores, Inc. owns 98.77%.

Voting Rights—Has sole voting power except as provided in preferred.

Preemptive Rights—None provided.

Dividends Paid—

1931 .....	\$0.25	1932.....	\$0.52½	1933.....	\$0.45
1934-35 .....	0.60	1936.....	0.90	1937.....	1.80
1938 .....	0.87½	1939.....	0.57½	1940.....	1.65
1941 .....	0.85				

<sup>1</sup>Jan. 25, 50 cents; Apr. 25, 35 cents.

Offered—(80,000 shares) at \$29 per share in Feb., 1929, by Lehman Brothers and A. G. Becker & Co., New York.

# Price Range

	1940	1939	1938	1937	1936
High .....	21	17	18	17	17
Low .....	15	12	7½	bid	bid

Transfer Agent and Registrar:

Huntington National Bank, Columbus, Ohio.

Common Exchange Offer:

See “Common Exchange Offer Authorized” under Federated Department Stores, Inc., a preceding statement.

The May Department Stores Company  
Capital Structure  
Capital Stock

Issue—1. Common, Par Value \$10.

Amount Outstanding, 1,230,396 shs.

<sup>1</sup>Earned per Sh.—1941, \$4.10; 1940, \$3.58.

<sup>1</sup>Divs. per sh. 1941, \$2.25; 1940, \$3.75.

Call Price, .....

Price Range—1940, 53½-36¾; 1932-40, 70-91½.

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<sup>1</sup>Fiscal years ended Jan. 31.

History

Incorporated under New York laws, June 4, 1910, with perpetual charter, to take over and operate under the same management as theretofore, Shoenberg Mercantile Co. of St. Louis, Mo., operating The Famous department store, founded in 1869, the May Shoe & Clothing Co. of Denver, Colo, founded in 1889, the May Co. of Cleveland, O., founded in 1899, and the May Real Estate & Investment Co. of St. Louis, Mo. which held title to real estate occupied by the St. Louis and Denver stores.

Early in 1911 acquired business of Wm. Barr Dry Goods Co. of St. Louis, subsequently consolidated with the business of the St. Louis store as Famous-Barr Co. in June, 1912, purchased entire stock of Boggs & Buhl, operating a department store in Pittsburgh, subsequently sold. In 1912 acquired entire capital stock of the M. O'Neil Co., operating a department store in Akron, O.; its assets were transferred to the parent in 1917.

In Mar., 1923 acquired, for cash, Hamburger & Sons department store in Los Angeles, now oper-

ated as May Co. of Los Angeles. In Sept., 1927, purchased assets of Bernheimer-Leader Stores, Inc. of Baltimore, now operated as May Co. of Baltimore. In Sept., 1939 opened new \$2,000,000 store in West Los Angeles shopping district.

### Subsidiaries

In Jan. 31, 1941, held 100% voting power in the following subsidiaries:

Name, place and date of incorporation and business:

Kingston Investment Co. (Mo. 1911)—Real estate

May Building Co. (Mo. 1924)—Real estate

May Building Co. (Cal. 1923)—Real estate

May Building Co. (O. 1913)—Real estate

May-O'Neil Building Co. (O. 1926)—Real estate

May Realty Co. (Md. 1923)—Real estate

Sostman Mercantile Co. (N. Y. 1911)—Buying agent

Van Catering Co. (Cal. 1935)

### Inactive Companies:

Wm. Barr Dry Goods Co. (Mo. 1879)

Famous Shoe & Clothing Co. (Mo. 1879)

The May Co. (O. 1898)

May Department Stores Corp. (Del. 1920)

M. O'Neil Co. (O. 1892)

### Business

Operates large department stores, as follows:

The May Co., Los Angeles, Cal. (2)

The May Co., Denver, Colo.

The May Co., Cleveland, O.

The May Co., Baltimore, Md.

The M. O'Neil Co., Akron, O.

Famous-Barr Co., St. Louis, Mo.

Company has offices in New York.

### Principal Properties

St. Louis, Mo.: St. Louis store, located in the Railway Exchange Building, is on leased premises. Company owns certain fee properties, mainly garage and warehouse facilities, directly or through May Building Co. of Missouri, and leases certain property through Kingston Investment Co., a subsidiary.

Cleveland, O.: The Cleveland store, on the public square, is on property leased directly or through May Building Co. of Ohio. The latter owns in fee the Cleveland garage and warehouse properties.

Los Angeles, Cal.: Older unit, at 8th & Broadway, is held under long term lease, but store has been enlarged since acquisition by both fee and leasehold properties held by May Building Co. of California, which owns in fee the patrons' garage and warehouse. Delivery garage is held under long term lease. The new store, on the block bounded by Wilshire Blvd., Fairfax Ave., 6th St. and Orange Grove Ave., comprises 5 floors and a basement with 200,000 sq. ft. of floor space.

Akron, O.: Store, warehouse and garage property located in Main and State Streets is owned in fee by the May-O'Neil Building Co. Company owns directly warehouse property not now used by the store.

Denver, Colo.: The larger portion of the Denver store at 16th & Champa Sts. is erected on land owned in fee, balance being on property leasehold in which is vested in May Building Co. of Missouri.

Baltimore, Md.: Store property at Howard & Lexington Sts. is owned in fee by May Realty Co. of Maryland, which also owns in fee property at 311 W. Lexington St., lease to outside interests. Warehouse and garage properties are directly owned in fee.

### Management

#### Officers:

M. J. May, President

L. D. Beaumont, Vice-President

S. B. Butler, Vice-President & Secretary

Jerome Dauby, Vice-President

N. L. Dauby, Vice-President

Tom May, Vice-President

W. D. May, Vice-President

F. Z. Salomon, Vice-President & Treasurer

S. M. Shoenberg, Vice-President

<sup>1</sup>Harmon S. Auguste, Vice-President

<sup>1</sup>L. M. Bodenheimer, Vice-President

<sup>1</sup>H. L. Katz, Vice-President

<sup>1</sup>Samuel Leask, Jr., Vice-President

<sup>1</sup>W. J. Brunmark, Vice-President

<sup>1</sup>Alfred Triefus, Vice-President

Leonard Strauss, Asst. Sec. & Asst. Trea.

Leo J. Wieck, Asst. Sec. & Asst. Trea.

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<sup>1</sup>Limited powers.



## Directors:

L. D. Beaumont, Cap d'Antibes, France

S. B. Butler, St. Louis

Jerome Dauby, Akron

N. L. Dauby, Cleveland

A. D. Goldman, St. Louis

Lincoln Gries, Akron

R. H. Gries, Cleveland

Robert Lehman, New York

M. J. May, St. Louis

Tom May, Los Angeles

W. D. May, Los Angeles

M. D. May, St. Louis

C. M. Rice, St. Louis

Alfred Rose, New York

W. E. Sachs, New York

F. Z. Salomon, St. Louis

S. M. Shoenberg, St. Louis

Leonard Strauss, St. Louis

Annual Meeting: Fourth Tuesday in April at 11 Broadway, New York.

Number of Stockholders: May 1, 1938: About 8,000.

Number of Employees, May 1, 1938: About 20,000.

General Office: 6th & Olive Streets, St. Louis, Mo.

Management Profit-Sharing—Mr. N. L. Dauby receives no salary, his compensation being based upon a percentage of profits of Cleveland store. Aggregate remuneration received for fiscal year ended Jan. 31, 1940, \$146,748.

Mr. M. J. May received aggregate remuneration of \$100,125 for fiscal year ended Jan. 31, 1940.

Certain other officers receive fixed salaries and bonuses based upon a percentage of profits of various stores. Aggregate remuneration for such officers receiving bonuses of more than \$30,000 for fiscal year ended Jan. 31, 1940 was as follows: F. Z. Salomon, \$70,221; Tom May, \$62,988; R. H. Gries, \$57,018.

### Income Accounts

Taken from company's annual reports: for prior years (as reported to SEC), see below.

#### Consolidated Income Account, years ended Jan. 31:

	1941	1940
1Net sales .....	\$112,954,904	\$103,905,198
Costs & expense.....	101,725,208	94,247,724
Maint. & repairs.....	707,157	462,053
Deprec. & amor.....	817,245	774,805
Ordinary taxes .....	1,889,761	1,842,468
Operating profit .....	7,815,533	6,578,148
Margin of profit.....	6.92%	6.33%
Other income .....	83,733	96,901
Total income .....	7,899,266	6,675,049
Int. & amortiz.....	291,258	272,668
Equip. addit., etc.....	537,209	1,007,987
Fed. income tax.....	1,674,000	991,500
Excess prof. tax.....	350,000	.....
Net profit .....	5,046,799	4,402,894
Dividends .....	2,768,346	24,613,910
Surplus for year .....	2,278,453	211,016
Prev. earn. surp.....	26,202,173	26,413,188
Earn. surp. 1-31.....	28,480,625	26,202,173
Earned per share.....	\$4.10	\$3.58
No. of shares .....	1,230,396	1,230,396

<sup>1</sup>Including leased departments.

<sup>2</sup>Includes dividend of 75 cents per share paid January 22, 1940, which was in lieu of dividend that would have been paid on March 1, 1940.

## Balance Sheets

Taken from company's annual reports; for prior years (as reported to SEC), see below.

## Consolidated Balance Sheet, as of Jan. 31:

Assets:	1941	1940
Cash.....	\$ 9,870,090	\$ 5,653,685
1U. S. securities.....	352,992	359,042
Receivables, net.....	12,955,105	11,758,158
6Mdse. on hand.....	13,637,396	13,390,787
7Mdse. in transit.....	1,048,547	954,925
Oth. curr. assets.....	602,549	448,160
<b>Total current</b> .....	<b>\$38,466,678</b>	<b>\$32,564,757</b>
Land, bldgs., etc.....	36,525,879	34,914,460
Deprec., amort. ....	10,124,956	9,345,828
Net ld., bldgs.....	26,400,923	25,568,632
2Leases.....	1	1
4Furn. & fixt., etc.....	1	1
3Deliv. equip. ....	1	1
Goodwill, etc. ....	1	1
Idle prop., net.....	784,264	758,365
Invest. net.....	1,361,171	1,367,562
Deferred charges.....	763,327	642,449
Other assets.....	119,867	137,926
<b>Total</b> .....	<b>\$67,896,233</b>	<b>\$61,039,695</b>
<b>Liabilities:</b>		
Accounts payable.....	\$ 2,151,049	\$ 1,770,790
Accr. payroll.....	1,306,515	953,643
Accr. gen. tax.....	784,289	753,920
Fed. inc. tax.....	1,905,000	942,000
Accr. interest.....	55,525	71,540
Other accruals.....	47,215	43,735
Stamps, etc. res.....	338,589	300,140
Bank loan.....	600,000	.....
Mtge. due.....	131,250	336,250
Oth. curr. liab.....	352,846	244,616
<b>Total current</b> .....	<b>\$ 7,672,279</b>	<b>\$ 5,416,635</b>

	1941	1940
Mtges. payable .....	\$ 4,545,600	\$ 4,749,350
Bank loans .....	4,400,000	2,000,000
<sup>5</sup> Defd. tax res.....	391,342	264,573
Insur., etc., res.....	64,573	65,150
Capital stock (\$10).....	12,303,960	12,303,960
Capital surplus .....	10,037,854	10,037,854
Earned surplus .....	28,480,625	26,202,173
	<hr/>	<hr/>
Total .....	\$67,896,233	\$61,039,695
Net curr. assets .....	\$30,794,399	\$27,148,122

<sup>1</sup>At cost, less amortization of premium: Market value, Jan. 31, 1941, \$358,804; 1940, \$371,011.

<sup>2</sup>Acquired subsequent to organization of company—at nominal amount; 1941, \$871,411 (1940, \$948,724) on basis of original amount of \$3,017,700 less amortization of \$2,146,289 (1940, \$2,068,976).

<sup>3</sup>At nominal amount: \$181,248 (1940, \$171,552) on basis of cost—less depreciation.

<sup>4</sup>At nominal amount (1941, \$4,502,483; 1940, \$4,769,630) on basis of cost—less depreciation.

<sup>5</sup>On deferred profit from installment sales.

<sup>6</sup>At lower of cost or market.

<sup>7</sup>At cost.

Accounts certified by Touche, Niven & Co.





## FINANCIAL &amp; OPERATING DATA

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Statistical Record—Years to Jan. 31

	1941	1940	1939	1938	1937	1936	1935
Earned per share .....	\$4.10	\$3.58	\$3.10	\$4.00	\$4.12	\$2.81	\$2.68
2Dividends per share .....	\$2.25	\$3.75	\$2.25	\$3.75	\$3.50	\$1.85	\$1.60
3Price range .....		53½—36¾	53¾—40¾	53—28½	66½—33¼	70—43¾	57¾—35¾
Net assets per share.....	\$41.31	39.45	\$39.63	\$38.78	\$38.53	\$37.91	\$36.95
Fixed charges earned:							
Before Fed. taxes & deprec. ....	28.09	23.62	120.11	19.28	19.02	10.86	8.65
Before Fed. taxes & after deprec. ....	25.28	20.78	117.41	17.28	17.09	9.39	7.49
After Fed. taxes & deprec. ....	18.33	17.15	114.53	14.79	14.50	8.10	6.61
Net assets per \$1,000 funded debt.....	6.681	\$8.192	\$10.494	\$9.736	\$9.205	\$7.719	\$5.821
Net cur. assets per \$1,000 fund. debt.....	\$3,442	\$4,022	\$5,383	\$4,816	\$4,586	\$3,837	\$2,923
Number of shares .....	1,230,396	1,230,396	1,230,396	1,230,396	1,230,396	1,230,414	1,230,414

1After non-recurring income.

2Dividends disbursed within fiscal year.

3Price range for calendar years ended eleven months after fiscal years.

4Based on company's annual report.

## Financial &amp; Operating Ratios

	1940	1939	1938	1937	1936	1935	1934
Current assets ÷ current liabilities.....	6.01	6.52	5.25	4.55	5.60	6.51	7.88
% cash & securities to curr. assets.....	18.41	25.83	18.96	19.63	26.79	31.80	27.58
% inventory to current assets.....	44.05	39.94	44.08	47.18	42.87	40.19	43.96
% net cur. assets to net worth.....	55.92	56.70	53.13	55.91	57.11	60.63	61.45
% property depreciated .....	28.18	25.87	25.32	23.94	22.37	20.67	16.29
% ann. depr. to gross prop.....	2.18	2.19	2.04	2.14	2.18	2.09	1.52
Capitalization:							
% long term debt .....	12.21	9.53	10.27	10.86	12.95	17.18	.....
% common stock & surplus.....	87.79	90.47	89.73	89.14	87.05	82.82	100.00
Sales ÷ inventory .....	7.24	7.55	7.47	6.35	6.42	6.63	5.61
Sales ÷ receivables .....	8.84	9.13	9.26	9.33	9.40	9.74	9.41
% sales to net property.....	406.38	395.38	411.37	395.33	347.48	336.98	481.60
% sales to total assets.....	170.23	166.16	179.32	166.98	149.80	144.33	158.59
% net income to total assets.....	7.21	6.43	8.24	8.32	5.81	5.49	6.03
% net income to net worth.....	9.07	7.82	10.31	10.70	7.12	7.26	6.58

## Analysis of Operations

	1940	*1939	1938	1937	1936	1935	1934
	%	%	%	%	%	%	%
Net sales .....	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Cost of goods sold .....	69.91	64.60	{ 64.59	78.89	79.89	80.34	95.66
Sell., gen. & adm. exp. ....	24.73	30.57	{ 29.17	14.78	15.09	14.89	
Operating profit .....	5.36	4.94	6.24	6.33	5.02	4.77	4.33
Other income .....	.10	.39	.09	.69	.69	.78	.72
Total income .....	5.46	5.35	6.33	7.03	5.71	5.55	5.05
Income deductions .....	.03	.35	.61	.74	.59	.48	.60
Int. & debt. disc. & exp.....	.24	.29	.30	.35	.54	.67	.....
Balance .....	5.19	4.69	5.43	5.94	4.58	4.39	4.45
Income taxes & surtax .....	.95	.82	.83	.95	.70	.59	.65
Net income .....	4.24	3.87	4.59	4.98	3.88	3.80	3.80



## Comparative Consolidated Balance Sheet, As of Jan. 31

Assets	21940	21939	21938	21937	21936	21935	1934
Cash	\$ 5,653,685	\$ 8,071,433	\$ 5,790,862	\$ 3,375,789	\$ 6,647,508	\$ 6,295,978	\$ 4,920,206
U. S. Government securities	309,042	304,689	370,664	3,295,000	2,039,450	4,059,425	3,627,056
Notes & accounts receiv. (net)	11,758,158	10,778,526	11,555,866	10,910,805	9,486,111	8,913,298	8,119,047
Inventories	14,345,712	13,040,802	14,324,384	16,631,200	13,902,359	13,066,297	13,621,762
Due from officers & employees	44,508	25,800	14,252	18,012	71,921	68,761	456,321
Sundry debtors	312,683	270,911	265,933	266,968	201,618	146,959	244,905
Sales tax stamps & tokens	90,969	102,565	73,704	82,413	68,707		
Total current assets	\$32,544,757	\$32,654,819	\$32,498,565	\$33,980,188	\$32,427,673	\$32,559,817	\$30,989,198
Securities of affiliates not cons.	1,237,678	5,000	5,000	5,000	5,000	5,000	
Other security investments (net)	90,631	85,580	84,826	154,162	261,949	312,968	351,031
Other notes receivable (net)	39,253	44,750	45,034	45,511	80,871	61,156	55,446
Equity in wholly-owned sub. subs.							71,785
Land, buildings & leaseholds	35,600,132	34,213,688	33,811,148	33,842,526	33,097,980	32,669,865	8,352,161
Established val. of leases acquired	1	1	1	1	1	1	1
Furniture, fixtures & equipment	1	1	1	1	1	1	1
Delivery equipment	1	1	1	1	1	1	1
Equity in wholly-owned subs.							10,614,978
Total	35,603,135	34,213,692	33,811,152	33,842,529	33,097,983	32,669,868	18,967,141
Less: Depreciation & amort. res.	10,031,500	9,233,527	8,882,990	8,101,255	7,405,395	6,712,847	3,088,935
Total	25,561,635	24,980,165	25,228,160	25,739,271	25,692,588	25,957,021	15,878,206
10 Goodwill, trade names, etc.	1	1	1	1	1	1	1
Inventory of supplies	208,903	200,281	267,344	211,466	175,418	182,880	161,659
Deferred charges	453,546	420,204	440,300	523,188	576,755	507,691	413,872
Notes rec. fr. off. empl. (net)	20,896	29,310	76,079	157,129	227,674	278,824	
Cash in closed banks (net)			3,367	5,129	25,658		23,581
11 Properties not used in operations	758,365	767,381	790,062				
Due from leased departments, net.	117,030	130,968	197,484	(95,557)	108,384	138,476	179,165
Other assets				22,461	35,925	217,121	95,894
Total	61,031,695	\$59,228,456	\$59,095,854	\$60,937,312	\$59,597,377	\$60,136,531	\$48,219,838
Liabilities							
Accounts payable	1,770,790	\$ 1,726,086	\$ 2,552,163	\$ 3,673,904	\$ 2,903,797	\$ 2,120,510	\$ 2,229,765
Accrued salaries, bonuses & comm.	853,643	853,224	1,108,264	1,308,022	854,951	762,713	
Accrued general taxes	753,929	680,062	680,209	691,177	521,239	418,584	918,532
Other accruals	43,735	43,175	121,071	13,578	17,026	16,616	
Reserve for Federal inc. & surtaxes	942,000	801,500	888,000	958,000	662,000	530,000	377,750
Reserve for trading stamps & coup.	300,140	287,748	278,676	271,698	211,582	175,093	165,726
Mortgage installments	336,250	326,250	316,250	393,209	387,782	757,736	
Accrued interest	71,544	77,522					
Other current liabilities	244,616	214,331	251,040	265,517	230,839	218,673	183,850
Total current liabilities	\$ 4,416,635	\$ 5,009,899	\$ 6,195,674	\$ 7,475,194	\$ 5,789,216	\$ 4,999,926	\$ 3,875,143
Subsidiary's mortgages payable	\$ 4,749,350	\$ 5,135,600	\$ 5,461,850	\$ 5,778,100	\$ 6,942,350	\$ 6,929,750	
Bank loans, due 1942-44	2,000,000						
12 Installment sales profit tax	264,573	256,081	239,899	198,708	141,972	140,423	\$ 217,911
Reserve for ins. & other conting.	65,150	71,873	74,962	75,715	77,477	106,996	
13 Capital stock	13,673,520	13,673,520	13,673,520	13,673,520	13,673,520	13,673,520	13,673,520
14 Capital surplus	10,037,854	10,037,854	10,037,854	10,037,854	10,038,574	10,038,574	10,038,520
Earned surplus	26,302,173	26,413,188	25,017,656	25,067,788	24,303,648	23,116,719	21,783,735
Total capital & surplus	49,915,547	50,124,562	49,083,030	48,779,163	48,015,748	46,828,813	45,496,075
15 Less: Treasury stock	1,369,560	1,369,560	1,369,560	1,369,560	1,369,380	1,369,380	1,369,290
Total	48,545,987	48,755,002	47,713,470	47,409,603	46,646,363	45,459,433	44,126,785
17 Net capital & surplus	\$61,039,695	\$59,228,456	\$59,095,854	\$60,937,312	\$59,597,377	\$60,136,531	\$48,219,838
Net current assets	\$27,148,122	\$27,644,920	\$26,302,891	\$26,504,994	\$26,638,457	\$27,559,891	\$27,114,055
18 Property Acct.—Analysis							
Additions at cost	\$ 1,846,169	\$ 439,243	\$ 937,973	\$ 773,576	\$ 693,625	\$ 24,337	Not stated
Retirements or sales	226,281			12,037	44,273		
Other additions	131,619			178,965			
Other reductions	2,063	36,704	969,354	185,858	21,226	28,812	
19 Deprec. Reserve—Analysis							
Additions charged to income	\$ 786,635	\$ 758,199	\$ 709,785	\$ 705,871	\$ 697,453	\$ 658,204	Not stated
Retire., renewals charged to res.	267,281			8,000	4,905		
Other additions	131,619						
Other reductions		17,664	230,052				

\*Taken from company's reports to stockholders and includes only company accounts as of Jan. 31, 1934.

†Taken from reports to Securities and Exchange Commission and is a consolidated statement of company, its real estate holding companies and other subsidiaries.

‡Includes accrued interest thereon. At cost, after premium amortization. Market quotation: 1934, \$3,601,217; 1935, \$4,052,965; 1936, \$2,043,016; 1937, \$3,294,016; 1938, \$375,494; 1939, \$374,938; 1940, \$371,011.

§After reserves (1940, \$925,385)

||Lower of cost or market in 1934 and 1935; in subsequent years, merchandise on hand stated at lower of cost or market and merchandise in transit stated at cost

¶After reserves 1934, \$237,307; 1935, \$81,205; 1936, \$118,705; 1937, \$164,769; 1938-1940, \$6,120

\*Land, buildings and leaseholds\*\* stated at cost and reserve for depreciation and amortization against this item is shown in statement (1940, \$10,034,500). Other property accounts have been written down to \$1 by deducting depreciation and amortization reserves. Book value of such other items at Jan. 31, 1940, were: Established value of leases, acquired subsequent to organization of company, \$948,724 (after deducting \$2,068,976 amortization); furniture, fixtures and equipment, \$4,769,630 (at cost less depreciation); delivery equipment, \$171,552 (at cost, less depreciation)

†Equity in net assets of wholly owned subsidiary real estate holding companies on basis of cost (reserve for amortization in parentheses) 1934, \$10,038,706 (\$576,272).

‡At Jan. 31, 1934, company wrote down "goodwill, trade names, etc." by \$15,015,225 to \$1 by charge to capital surplus (part of which was created by reduction in par value of capital stock)

§After depreciation 1940, \$121,654; 1939, \$112,869; 1938, \$238,437

||Reserve for Federal income taxes on deferred profit from installment sales

¶Represented by 1,367,352 \$10 par shares, including treasury stock (see note 16 below)

†Principal "Capital surplus" charges follow

‡Reduction in par value of capital stock from \$25 to \$10 per share, (ex \$18,401,190; reduction in book value of goodwill, trade names, etc. to \$1; (dr) \$15,015,225; miscellaneous adjustments, (dr) \$6,417.

§Treasury stock (shares) 1934, 136,920; 1935 and 1936, 136,908; 1937-40, 136,956

||Land and capital shares (after deducting treasury shares) 1934, 1,230,423; 1935 and 1936, 1,230,414; 1937 to 1940, 1,230,396

¶Changes apply only to "Land, buildings and leaseholds" account and exclude "furniture, fixtures and equipment." Established value of leases acquired subsequent to organization of company, and "delivery equipment" accounts, which are carried at nominal sums of \$1 each on balance sheet after deducting depreciation reserve and reserve for adjustment of stock value to \$1 (see also note 8 above)

†Changes for 1937-40 exclude changes in land and buildings not used in store operation, in prior years such changes are included.

‡General Notes: (a) 36,000 capital shares reserved in 1926 for sale to employees there remained at Jan. 31, 1940, 30,426 shares available for subscription at \$55 per share

(b) No appropriation of surplus has been made for treasury shares.

(c) Accounts certified by Touche, Niven & Co.



## INCOME ACCOUNTS

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## Comparative Consolidated Income Account, Years Ended Jan. 31

	21940	21939	21938	21937	21936	21935	1934
Net sales .....	\$103,905,199	\$98,411,263	\$107,030,180	\$101,754,866	\$89,277,765	\$86,795,995	\$76,469,968
Cost of goods sold.....	72,636,401	63,571,236	69,132,081	80,271,108	71,320,716	69,732,653	
Selling, general & adm. expenses.....	25,658,909	29,829,159	31,055,159	14,957,993	13,360,371	12,773,036	73,154,997
Provision for doubtful receivables.....	39,728	151,337	161,186	80,366	114,388	132,824	
Balance .....	5,570,161	4,859,531	6,681,755	6,445,398	4,482,291	4,137,482	3,314,971
Dividends & interest on securities.....	32,920	31,770	82,316	86,709	67,168	102,939	402,574
Interest on notes & accts. rec., etc.....			Not stated	359,020	303,702	313,448	
Rental income.....	65,856	59,410		81,323	79,239	70,890	
Disc. on purch. & sales tax coup.....				63,712	52,747	23,192	145,876
Miscellaneous other income.....	1,732	294,175	16,216	112,881	111,697	165,551	
Total income .....	5,670,668	5,244,885	6,780,286	7,149,043	5,096,843	4,813,501	3,863,421
Net cost of minor additions.....		320,595	525,408	615,130	443,171	316,678	144,375
Provision for decline in investments.....			60,612	74,350	53,222	50,075	243,009
Miscellaneous other deductions.....	3,606	22,958		43,601	24,776	47,686	70,672
Interest on funded debt.....	242,836	268,899	295,438	334,240	419,374	568,487	
Amort. of debt discount & expense.....	5,249	10,488	21,795	21,110	62,308	16,265	
Other interest .....	24,583	2,068	39,357	20,155	5,839	2,696	Not stated
Balance .....	5,394,395	4,619,877	5,807,771	6,040,458	4,088,154	3,811,614	3,405,365
Provision for Federal income taxes.....	991,500	810,000	871,000	914,500	625,000	510,000	500,000
Surplus on undistributed profits.....			19,600	55,500			
Net income to surplus.....	4,402,895	3,809,877	4,917,771	5,070,458	3,463,154	3,301,614	2,905,365
Earned surplus beginning of year.....	26,413,188	25,371,656	25,067,788	24,303,648	23,116,719	21,783,735	19,683,975
Other surplus credits.....							425,000
Capital dividends.....	4,613,910	2,765,345	4,613,903	4,306,318	2,276,225	1,968,630	1,230,606
Earned surplus end of year.....	\$ 26,202,173	\$ 26,413,188	\$ 25,371,656	\$ 25,067,788	\$ 24,303,648	\$ 23,116,719	\$ 21,783,735
Supplementary P. & L. Data							
Depreciation & amortization.....	\$ 774,806	\$ 759,182	\$ 710,975	\$ 724,425	\$ 720,250	\$ 678,576	\$ 287,754
Maintenance & repairs.....	462,053	464,110	545,783	285,345	275,318	283,274	Not stated
Taxes (other than Federal income).....	1,842,468	1,841,647	1,612,606	919,867	773,950	727,484	
Rents and royalties.....	1,384,042	1,498,592	1,553,207	2,690,481	2,838,518	2,857,898	
Parent company's net sales.....	\$103,839,075	\$98,318,077	\$106,913,965	\$101,754,866	\$89,277,765	\$86,795,995	Not stated
Net income of parent company.....	4,405,323	3,815,117	4,929,801	5,070,458	3,463,154	3,301,614	2,905,365

<sup>1</sup>Taken from company's reports to stockholder and includes only company's accounts in 1934.

<sup>2</sup>Taken from reports to Securities and Exchange Commission and includes accounts of company, its real estate holding companies and other subsidiaries.

Accounts for years 1937-38 and subsequent are not strictly comparable with those of 1936-37, 1935-36 and 1934-35 item for item. Prior to 1937-38 greater portion of items shown under "Supplementary p. & l. data" below statement is included in "Cost of goods sold" and remaining portion included in "Selling, general & administration expenses." For the year 1937-38 and subsequent years SEC reports do not include any part of such items in "Cost of goods sold"; such items are shown separately in report, but in above statement are included in item "Selling, general & administration expenses." Comparability is also affected by change in stating "Cost of goods sold"—in year 1937-38 purchase costs are stated net of discounts and miscellaneous other store income, such as "Interest on notes & accounts receivable, etc." and "Rental income" (shown separately in prior years), has been applied as a reduction of purchase costs.

<sup>3</sup>Gross sales less discounts, returns and allowances (including leased department sales).

<sup>4</sup>Includes related portions of items under "Supplementary p. & l. data" below statement. See also note (2) above.

<sup>5</sup>After collections on accounts previously charged off.

<sup>6</sup>Rental income from buildings and leaseholds not used in store operations (net after deduction of expenses exclusive of depreciation and amortization).

<sup>7</sup>Net cost of minor additions to furniture, fixtures, delivery and other equipment. See also note (c) below.

<sup>8</sup>For 1934, comprises: Addition to reserves for Federal income taxes and contingencies.

<sup>9</sup>In 1934 represents transfer from contingency reserve.

<sup>10</sup>1939: Includes \$278,242 refund of service purchased.

General Notes:—(a) Profits on installment sales are taken up in full when sales are made; however, provision is made for doubtful accounts, also for collection expense, loss of gross profit, unearned interest and carrying charges and for refundable carrying charges.

(b) Company has elected to report profits from installment sales on basis of collection for Federal income tax purposes.

(c) Book value of furniture, fixtures, delivery and other equipment (aggregating \$6,519,431) were reduced to \$1 each and deferred charges of \$202,100 were written off by charges to earned surplus during year ended Jan. 31, 1933. Above income account does not include charges for depreciation and amortization of these items. Had additions for depreciation and amortization and the costs in respect of net additions during year to furniture, fixtures, etc., been capitalized instead of being charged against earnings, net income for years ended Jan. 31 would have been: 1934, \$2,387,372; 1935, \$2,994,417; 1936, \$3,299,174; 1937, \$5,077,211; 1938, \$4,849,426; 1939, \$3,514,169; 1940, \$4,790,527.





## Funded Debt

May Department Stores Co. 13¼% notes:

Issued \$5,000,000; outstanding, Jan. 31, 1941, \$5,000,000. All held by Irving Trust Co., New York, and National City Bank of Cleveland.

Due 1941 to 1948. Proceeds applied \$2,000,000 to payment of previously incurred bank indebtedness, and balance added to working capital.

## Subsidiary Mortgage Debt

May Building Co. (O.):

31¼% sinking fund leasehold bonds, due Sept. 1, 1950; principal payments of \$186,000 annually commencing Sept. 1, 1943: Outstanding, Jan. 31, 1941, \$1,490,000.

Note dated Sept. 7, 1927, secured by first mortgage on new warehouse and patrons' garage properties in Cleveland, bearing interest at rate of 4%; payable \$26,000 annually each Sept. 1: Issued, \$1,250,000; outstanding, Jan. 31, 1941, \$712,100.

May Realty Co. (Md.):

Note dated Aug. 1, 1927, secured by first mortgage on real property owned by above company in Baltimore, Md., bearing interest at rate of 5%, principal payable \$26,000 F&A 1 of each year to Feb. 1, 1947, incl. and remaining sum payable on Aug. 1, 1947: Issued, \$2,600,000; outstanding, Jan. 31, 1941, \$1,066,000.

May-O'Neil Building Co.:

Note dated May 7, 1927, secured by first mortgage on real property owned by the company in Akron,

O. Due Sept. 1, 1950; payable \$53,250 annually each Mar. 1; interest at 4% per annum: Issued, \$2,500,000; outstanding, Jan. 31, 1941, \$1,408,750.

### Capital Stock

1. May Department Stores Co. common; par \$10:

Authorized—2,500,000 shares; issued (including scrip equivalent to 20 shares), 1,367,352 shares; outstanding, 1,230,396 shares; in treasury, 136,956 shares; par \$10 (changed from \$100 par to \$50 par in Dec., 1922 and 2 new shares issued for each old share; changed to \$25 par Nov. 23, 1926 and 2 new shares issued for each old share; changed to \$10 par on a share for share basis April 18, 1933).

### Dividend Record (in \$)

#### (Calendar Years)

#### (\$100 par shares)

1910 .....	Nil	1911.....	1.00	1912.....	4.75
1913-14 .....	5.00	1915-16.....	2.75	1917-18.....	5.00
1919 .....	6.00	<sup>1</sup> 1920.....	7.75	<sup>2</sup> 1921-22.....	8.00

#### \$50 par shares after 2 for 1 stock split)

1923-25 .....	5.00	1926.....	5.75
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#### (\$25 par shares after 2 for 1 stock split)

1927-28 .....	4.00	<sup>3</sup> 1929.....	3.50	<sup>4</sup> 1930.....	2.00
1931 .....	2.50	1932.....	1.40	<sup>5</sup> 1933.....	0.25

#### (\$10 par shares after share for share exchange)

1933 .....	0.75	1934-35.....	1.60	1936.....	2.75
1937-40 .....	3.00	<sup>6</sup> 1941.....	0.75		

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<sup>1</sup>Plus 33 1/3% in stock. <sup>2</sup>Plus 30% in stock. <sup>3</sup>Plus 11 1/4% in stock. <sup>4</sup>Plus 5% in stock. <sup>5</sup>Paid prior to capital change. <sup>6</sup>75 cents Mar. 1, 1941.

Voting Rights—One vote per share.

Preemptive Rights—None except as exist under New York laws.

Listed—New York Stock Exchange. Unlisted trading on Cleveland Stock Exchange.

Transfer Agent—Irving Trust Co., New York.

Registrar—Lawyers Trust Co., New York.

Price range—	1940	1939	1938
Common .....	53½-36¾	53¾-40¾	53-28½

Subscription Rights: Stockholders of record Apr. 5, 1927 had right to subscribe to 104,000 shares of new common at \$55 per share to the extent of one new share for each 10 shares held; rights expired Apr. 26, 1927.

Stockholders of record Oct. 25, 1929, had the right to subscribe to 116,934 shares of additional stock at \$70 a share on basis of one new share for each ten shares held; rights expired Nov. 15, 1929; offering was underwritten by Goldman, Sachs & Co. and Lehman Brothers.





## Capital Structure

## Funded Debt

Issue	Rating	Amount Outstanding	Times		Interest Dates	Call Price	Price Range	
			Charges 1940	Earned 1939			1940	1932-40
1. 5½% sinking fund notes, 1937.....	Ca	\$1,487,500	.....	.....	{ M1-&-S	100	57-21	80¼-20
2. Conv. 6% s. f. debentures, 1941.....	Ca	4,457,000			{ M1&S	100½	62-16	84 -16

## Capital Stock

Issue	Par Value	Amount Outstanding	Earned per Sh.		Divs. per Sh.		Call Price	Price Range	
			1940	1939	1940	1939		1940	1932-40
1. \$1 cumulative 1st preferred.....	no par	16,422 shs.	Nil	Nil	Nil	Nil	N.C.	4¾-4½	18 -4½
2. \$1.16⅔ cum. 2nd preferred.....	no par	4,692 shs.	Nil	Nil	Nil	Nil	N.C.	.....	.....
3. \$3 cumulative preferred .....	no par	40,907 shs.	Nil	Nil	Nil	Nil	\$55	12¾-3¾	38½-2
4. Common .....	no par	472,923 shs.	.....	.....	Nil	Nil	.....	21½- 1½	22¾- ¾

1Price range since 1938.



## History

Incorporated in West Virginia Feb. 5, 1900. Various subsidiary corporations have been organized from time to time to carry on the business of the company in the United States and in foreign countries.

In 1927 the company accepted a contract to construct, with others, a central highway in Cuba, which was to extend for a distance of over 500 miles. This was part of a general public works program by the Cuban Government, and involved construction of various types of buildings, engineering projects, etc., in addition to the highway project. The work [illegible] other property \$4,448,707. In determining this valuation, the special master accepted company's figures of value of assets other than the Cuban bonds. This \$4,448,707 estimate of company was made as of Oct., 1940.

Valuation found for the Cuban bonds of \$4,829,265 is divided as follows: For the \$4,323,300 bonds of 1977 the master placed a value of 57, or a total of \$2,464,281, and for the \$4,379,600 bonds of 1955, a value of 54, or a total of \$2,364,984.

In a supplemental report Mr. Black found that company's probable earning capacity was \$647,099 per annum.

[Illegible]

## Business & Products

This company has been rated as the largest road building organization in the world. The company's business has been international in scope, operations

having been conducted in North America, Argentina, Brazil, Chile, Guatemala, Colombia, Cuba, Poland, Hungary, Spain, Japan and Australia.

The business now carried on by the company is restricted to U. S. and Canada and is confined to the construction by contract of street and highway paving and work incidental thereto, although under its charter the company has powers to engage in general [illegible]

United States Circuit Court of Appeals for the  
Ninth Circuit

Tax Court Docket No. 3992.

ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, EVELYN HAMBURGER AND  
JENNIE MARX, EXECUTRICES,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION FOR REVIEW OF DECISION OF  
THE TAX COURT OF THE UNITED  
STATES

To the Honorable Judges of the United States  
Circuit Court of Appeals For the Ninth Circuit:

Come now the petitioners above named and respectfully show:

I.

Nature of the Controversy

Belle Alice Hamburger Nathan died at Los Angeles, California on October 13, 1940. P. L. Nathan and Evelyn Hamburger were duly appointed and qualified as Executors of said decedent's estate.

They (as said Executors, duly filed the federal estate tax return (Form 706) with the Collector of Internal Revenue for the Sixth District of California.

Respondent determined a deficiency in the estate tax against petitioners in the sum of \$103,177.16.



This deficiency arose chiefly because respondent had increased the value of the gross estate. [446]

Petitioners filed an appeal with The Tax Court of the United States.

The case was tried at Los Angeles, California, on October 4th and 5th, 1945, before the Honorable Arthur J. Mellott, Judge of The Tax Court of the United States. Thereafter, and on or about December 8, 1945, Judge Mellott resigned as a Judge of The Tax Court of the United States, and the Honorable Byron B. Harlan thereafter was appointed Judge of The Tax Court of the United States and this case was assigned to him for decision.

Under date of July 17, 1946 The Tax Court of the United States, by Judge Harlan, promulgated its Memorandum Findings of Fact and Opinion. Under date of July 22, 1946 an order was made and entered amending said opinion. On the 16th day of August, 1946 petitioners filed with the Tax Court of the United States a Motion for Rehearing, a Motion for Reconsideration, and a Motion for Review by the Full Court of said opinion.

Each of said Motions was denied on the 16th day of August, 1946.

On December 31, 1946 The Tax Court of the United States entered its decision that there was a deficiency in estate tax due from petitioners in the amount of \$47,543.61.

The controversy involves a determination of the fair market value on October 13, 1941 of 425.817 shares of the capital stock of A. Hamburger & Sons

and 104.167 shares of the capital stock of Hamburger Realty Company.

Petitioners, in their estate tax return, placed a value of \$983.35 per share or \$418,735.66 for the 425.817 shares of A. Hamburger & Sons, and placed a value of \$2,113.55 per share, or [447] \$220,162.16 for the 104.167 shares of Hamburger Realty Company.

The respondent in his notice of deficiency valued the stock of A. Hamburger & Sons at \$1,200.00 per share, or \$510,980.40 for the 425.817 shares, and valued the stock of Hamburger Realty Company at \$4,850.00 per share, or \$505,209.95 for the 104.167 shares.

At the trial of the instant case respondent contended for \$1,000.00 per share for the stock of A. Hamburger & Sons and \$3,900.00 per share for the stock of Hamburger Realty Company.

Petitioners in their Amended Petition to Conform to Proof, claimed the value of the stock of A. Hamburger & Sons to be \$300.00 per share, or \$127,745.10 for the 425.817 shares, and claimed the value of the stock of Hamburger Realty Company to be \$1,300.00 per share, or \$135,417.10 for the 104.167 shares.

The 425.817 shares of stock of A. Hamburger & Sons and the 104.167 shares of stock of Hamburger Realty Company owned by decedent at the time of her death represented 11.28 per cent and 10.4167 per cent, respectively, of the total outstanding stock of the respective companies.

In compliance with the rule of The Tax Court of

the United States that facts be stipulated to the fullest extent, the parties agreed by stipulation as to the fair market value of all the underlying assets of each of said corporations, except the value of the stock of Hamburger Realty Company owned by A. Hamburger & Sons; the liabilities of each company; the earnings of and dividends paid by each company; the corporate organization, its capitalization and stock ownership.

Petitioners presented the testimony of two witnesses in regard to the inharmonious relations existing between the stockholders [448] and directors, the internal stagnation of the companies, lack of management, and the like.

There was no controversy between petitioners and respondent as to the underlying facts. The only controversy was the conclusion to be drawn from such facts with regard to the fair market value of the stocks in question and the method to be used in valuing said stocks.

The Tax Court of the United States in its Findings of Facts found the underlying facts as stipulated and as drawn from the uncontested testimony of Mr. Milliken, Mr. Mitchell, and Mr. Sharp, three witnesses called by petitioners, and who testified with regard to the disharmony existing between the directors and officers, the physical condition of the officers, and directors, the lack of management and business and investment policies, and certain insurance features of the lease to May Department Stores.

Petitioners presented the testimony of two wit-

nesses who qualified to give expert testimony on the question of the fair market value of the stocks involved herein. Each of said witnesses testified that marketable securities of very liquid companies were selling on the basic dates at substantial discounts below the fair market value of their underlying assets.

Each of the witnesses had studied and analyzed the stipulation of facts and the pertinent exhibits and heard the testimony of the petitioners' first three witnesses, and each had studied a copy of the hypothetical questions, which included all the facts in the case. These witnesses valued the stock of A. Hamburger & Sons at from \$300.00 to \$337.50 per share and valued the stock of Hamburger Realty Company at from \$1,750.00 to \$2,000.00 per share.

Each of the said witnesses took into account all the factors of valuation, i. e., earnings, dividends paid and payable, marketability of the stocks, net worth, the condition of the management, a comparison with other similar securities, market trends, the position of minority interests in said corporations, and other similar facts.

It was and is petitioners' claim that said stocks must be valued by a consideration and weighing of all said factors and that this method is the only method approved by the courts and respondent's own Regulations.

Respondent, however, claimed that the asset value was the only factor to be considered and produced a witness to so testify. The value of the total net assets of A. Hamburger & Sons was \$3,881,767.33



or \$1,027.00 per share, and the value of the total net assets of Hamburger Realty Company was \$3,927,153.64 or \$3,927.15 per share. Respondent's witness testified that the \$1,027.00 and \$3,927.00 respectively were the fair market values of the respective securities, but he reduced them to round figures of \$1,000.00 and \$3,900.00, respectively, because such stocks sold at round figures.

Judge Harlan, who did not hear the witnesses, found as a fact that the value of A. Hamburger & Sons stock was \$1,000.00 per share and that the value of Hamburger Realty Company stock was \$3,900.00 per share, and would have found a somewhat larger value based on the net worth of the corporations, had not respondent contended for such values as found.

Judge Harlan affirmatively states that he used the fair market value of the assets as the sole factor in determining the value of the respective stocks here involved. [450]

In so doing, Judge Harlan states that the methods contended for by petitioners, i. e., consideration of all the factors, and the method contended for by respondent, i. e., earnings and asset value, would be resolved. He resolves the contention in favor of respondent and then eliminates, on erroneous assumptions, the earnings factor from respondent's theory, and accepts as the only method of valuing the stocks herein involved the net worth method.

The erroneous assumptions which petitioners claim Judge Harlan made are (1) that the two corporations had abnormal systems of paying dividends



whereby the stockholders profited more from receiving the use of the assets of the corporation to their own profit than they would have profited by receiving normal dividends. Yet, Judge Harlan's findings of fact show that almost to the penny the net earnings of the corporations, after federal income tax, was paid to the stockholders as dividends; (2) that there was \$384,000.00 in "open accounts," as shown on the balance sheet of A. Hamburger & Sons, which reflects a use of the assets by the stockholders. The correct amount of "open accounts," as shown in Judge Harlan's findings of fact, is \$322,539.62, and these were anticipations of the dividends for said year, as shown by the findings of fact; (3) that the so-called use of A. Hamburger & Sons assets by way of loans to the stockholders also obtained in Hamburger Realty Company. Judge Harlan's finding with respect to the balance sheet of said company does not reflect a single loan to a stockholder; (4) that during the years 1940 and 1941 there were ample bonds paying 4 per cent and of extremely high security. There is no evidence of this anywhere in the record. The 4 $\frac{1}{4}$  per cent 1947-1952 United States [451] Treasury Bond shown in A. Hamburger & Sons portfolio would yield only 3.6 per cent on its October 13, 1941 value. (5) That the loans could easily have been invested at 4 per cent to yield \$69,000.00 which, after taxes, would have left \$50,000.00 available for dividends. The tax rate for 1941 was 31 per cent and excess profit tax rate for incomes over \$25,000.00 was 55 per cent. Such tax rates applied

to the said gross yield would have reduced the amount available for dividends to approximately \$21,000.00. (6) That valuing the May Department Store Building at a fixed capitalization of income is the equivalent of using the actual earnings of the corporation as a factor in determining the value of the stock.

Petitioners aver that in the record and proceedings before The Tax Court of the United States, in the denial of petitioners' Motions, and in the opinion and decisions rendered by The Tax Court of the United States, manifest error occurred and intervened to the prejudice of petitioners, who now assign the following points on which petitioners intend to rely in this proceeding:

The Tax Court of the United States Erred:

(A) In determining and deciding without any evidence or substantial evidence in support thereof a value of \$1,000.00 per share for the stock of A. Hamburger & Sons.

(B) In determining and deciding, without any evidence or substantial evidence in support thereof, a value of \$3,900.00 per share for the stock of Hamburger Realty Company.

(C) In denying petitioners' Motion for Rehearing.

(D) In denying petitioners' Motion for Reconsideration.

(E) In denying petitioners' Motion for Review by the Full [452] Court of the Opinion entered on July 17, 1946.

(F) In determining and deciding contrary to the evidence and to the findings of fact that the dividend paying policy of A. Hamburger & Sons was abnormal.

(G) In determining and deciding contrary to the evidence and the findings of fact that the system of paying dividends by A. Hamburger & Sons to stockholders profited the stockholders more from receiving the use of the assets of the corporation to their own individual profit than they would have profited by receiving normal dividends.

(H) In determining and deciding without any evidence and contrary to the findings of fact that the assets of A. Hamburger & Sons could have been invested in bonds on the market returning four per cent interest and of extremely high security.

(I) In failing to determine and decide that the open accounts to stockholders shown on the balance sheet of A. Hamburger & Sons was a mere anticipation of the dividends to be declared by said company for the year 1941.

(J) In determining and deciding that an amount equivalent to the loans to stockholders shown on the balance sheet of A. Hamburger & Sons could have been invested to yield the corporation a four per cent return thereon.

(K) In determining and deciding that a four per cent yield on an amount equivalent to the loans to stockholders shown on the balance sheet of A. Hamburger & Sons would have equaled \$50,000.00 more income available for dividends.

(L) In failing to determine and decide, as found in the findings of fact, that the very reasons de-

terminated and decided as [453] eliminating the earnings factor and dividend paying factor as valuation factors, would have been of prime importance to a purchaser of a minority stock interest in A. Hamburger & Sons.

(M) When determining the fair market value of the stock of A. Hamburger & Sons, in failing to take into consideration:

- (1) The company's earning power;
- (2) The company's dividend-paying capacity;
- (3) The marketability of the stock;
- (4) The testimony of expert witnesses;
- (5) The status of the management, present and future;
- (6) The comparison with other securities;
- (7) The fact that the interest here to be valued is a minority interest;
- (8) The trend of the market and economic conditions;
- (9) All other relevant factors having a bearing upon the stock and the value thereof, as required by respondent's regulations and established court decisions, including net worth.

(N) In determining and deciding that the per share fair market value of the stock of A. Hamburger & Sons was a sum equivalent to the value of its net assets divided by the number of its outstanding shares.

(O) In determining and deciding that the business operations of A. Hamburger & Sons were abnormal.



(P) In determining and deciding contrary to the evidence and to the findings of fact that the dividend paying policy of Hamburger Realty Company was abnormal. [454]

(Q) In determining and deciding contrary to the evidence and the findings of fact that the system of paying dividends by Hamburger Realty Company to stockholders profited the stockholders more from receiving the use of the assets of the corporation to their own individual profit than they would have profited by receiving normal dividends.

(R) In failing to determine and decide, as found in the findings of fact, that the very reasons determined and decided as eliminating the earnings factor and dividend-paying factor as valuation factors, would have been of prime importance to a purchaser of a minority stock interest in Hamburger Realty Company.

(S) When determining the fair market value of the stock of Hamburger Realty Company, in failing to take into consideration:

- (1) The Company's earning power;
- (2) The Company's dividend-paying capacity;
- (3) The marketability of the stock;
- (4) The testimony of expert witnesses;
- (5) The status of the management, present and future;
- (6) The comparison with other securities;
- (7) The fact that the interest here to be valued is a minority interest;



(8) The trend of the market and economic conditions;

(9) All other relevant factors having a bearing upon the stock and the value thereof, as required by respondent's regulations and established court decisions, including net worth.

(T) In determining and deciding that the per share fair market value of the stock of Hamburger Realty Company was a sum [455] equivalent to the value of its net assets divided by the number of its outstanding shares.

(U) In determining and deciding that the business operations of Hamburger Realty Company were abnormal.

(V) When, in determining and deciding the value of the Hamburger Realty Company stock, it eliminated the earnings factor because the value of the May Company building had been determined by capitalizing the lease rentals.

(W) In determining and deciding that the cases of *Melville Hanscom*, 24 B.T.A. 173; *Estate of Henry E. Huntington*, 36 B.T.A. 698; and *Bank of California v. Commissioner*, 173 Fed (2d) 428, are authority or even persuasive in the instant case.

(X) In failing to give effect to Section 81.10 of Respondent's Regulations 105.

(Y) In failing to give effect to the purchasers' views in determining fair market value.

(Z) In giving effect only to the sellers' views in determining fair market value.

(AA) In determining and deciding the fair

market value of the stocks involved contrary to law.

(BB) In determining and deciding the fair market value of the stocks involved contrary to its Findings of Fact.

(CC) In rendering a decision contrary to law.

(DD) In rendering a decision contrary to its Findings of Fact. [456]

## II.

### The Court in Which Review is Sought

The United States Circuit Court of Appeals for the Ninth Circuit is the Court in which review of said decision of The Tax Court of The United States is sought, pursuant to the provisions of section 1141 of the Internal Revenue Code.

## III.

### Venue

The denials of petitioners' Motions for Rehearing, Reconsideration, for Review by the Full Tax Court of the United States, were entered August 16, 1946. The final decision of The Tax Court of The United States determining a deficiency was entered on December 31, 1946.

Belle Alice Hamburger Nathan was for many years a resident of the County of Los Angeles, State of California, and died therein on October 13, 1940. Her Last Will and Testament was duly admitted to probate in the Superior Court of the State of California, in and for the County of Los Angeles.

P. L. Nathan and Evelyn Hamburger were duly appointed and qualified as Executors of her Last Will and Testament. Both have been residents of the County of Los Angeles, California, for many years. P. L. Nathan died in 1946 and Jennie Marx was duly appointed and qualified as Co-Executrix of the Last Will and Testament of Belle Alice Hamburger Nathan, deceased. Evelyn Hamburger and Jennie Marx are the acting Executrices of her estate.

The federal estate tax return, Form 706, for said estate was duly filed with the United States Collector of Internal Revenue for the Sixth District of California, whose office is located at Los Angeles, California, and within the Ninth Judicial Circuit of [457] the United States.

The parties hereto have not stipulated that said decision may be reviewed by any Court of Appeals other than the one herein designated.

Wherefore, petitioners pray that the denial of petitioners' Motions and the decision of The Tax Court of the United States herein be reviewed by the United State Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and transmitted to the Clerk of said Court for filing; and that appropriate action be taken, to the end that the errors complained of may be reviewed and corrected by said Court.

Dated March 22nd, 1947.

/s/ CLAUDE I. PARKER,  
/s/ RALPH W. SMITH,  
/s/ J. EVERETT BLUM,  
/s/ L. A. LUCE,

Counsel for Petitioners. [458]

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[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To John P. Wenchel, Chief Counsel, Bureau of  
Internal Revenue, Washington, D. C.:

You Are Hereby Notified that the petitioners, on the 25th day of March, 1947, filed with the Clerk of The Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of The Tax Court of the United States heretofore rendered in the above-entitled cause, and of its denial of petitioners' Motions for Rehearing, Reconsideration and Review by the Full Court. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of March, 1947.

/s/ CLAUDE I. PARKER,  
/s/ RALPH W. SMITH,  
/s/ J. EVERETT BLUM,  
/s/ L. A. LUCE,

Counsel for Petitioners. [459]

Personal service of the foregoing Notice, together with a copy of the Petition for Review is hereby acknowledged this 25th day of March, 1947.

/s/ J. P. WENCHEL, CAR  
Chief Counsel, Bureau of Internal Revenue, Counsel  
for Respondent. [460]

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The Tax Court of The United States

Docket No. 3992

ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, P. L. NATHAN, et al., Executors,  
505 South Windsor Boulevard, Los Angeles,  
California,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

MOTION TO AMEND THE TITLE OF THE  
ABOVE-ENTITLED ACTION ON APPEAL

Come now the petitioners above-named by their attorneys of record and move this Honorable Court for its order amending the Petition for Review of Decision of the Tax Court of the United States, the Notice of Filing Petition for Review, Petitioners' Designation of Contents of Record on Review, and the Petitioners' Statement of Points to be Relied



Upon and Designation of Parts of Record to be Printed, by substituting for the title in said papers heretofore filed herein the following:

“Estate of Belle Alice Hamburger Nathan, Evelyn Hamburger, Executrix, Petitioner.”

That said motion is based upon the following grounds:

That upon the admission of the Will of Belle Alice Hamburger Nathan to probate in the Superior Court of the State of California in and for the County of Los Angeles, P. L. Nathan and Evelyn Hamburger were appointed co-executors of said Last Will and Testament. That thereafter, and during the year 1946, P. L. Nathan died, leaving Evelyn Hamburger as the Executrix of said Last Will and Testament. [461]

That said Last Will and Testament provided that upon the death of P. L. Nathan or Evelyn Hamburger, Jennie Marx should be appointed so-executrix of said Last Will and Testament.

That J. Everett Blum, one of petitioners' attorneys, who prepared said appeal papers, misunderstood the statement of the attorneys representing the estate in the Court in which said Will is being probated to the effect that Jennie Marx had been appointed such co-executrix, whereas the information should have been that Jennie Marx was named as such succeeding executrix but had not yet been appointed or qualified. That the affidavit of J. Everett Blum is hereto attached and marked exhibit A.

Dated this 27th day of March, 1947.

Respectfully submitted,

/s/ CLAUDE I. PARKER,

/s/ RALPH W. SMITH,

/s/ J. EVERETT BLUM,

/s/ L. A. LUCE,

Counsel for Petitioners. [462]

Personal service of the foregoing Motion to Amend and Affidavit of J. Everett Blum is hereby acknowledge this 31st day of March, 1947.

/s/ J. P. WENCHEL, C.A.R.,

Chief Counsel, Bureau of Internal Revenue, Counsel  
for Respondent.

[Endorsed]: Filed and granted Mar. 31, 1947.  
Signed Eugene Black, Judge. [463]

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[Title of Tax Court and Cause.]

AFFIDAVIT OF J. EVERETT BLUM IN SUP-  
PORT OF MOTION TO AMEND THE  
TITLE OF THE ABOVE-ENTITLED PRO-  
CEEDING AND IN SUPPORT OF MOTION  
TO AMEND THE PETITION FOR RE-  
VIEW OF DECISION OF THE TAX  
COURT OF THE U. S.

State of California,  
County of Los Angeles—ss.

I, J. Everett Blum, being first duly sworn, deposes  
and says: That he is one of the attorneys for the

above-named petitioners and was one of the attorneys during the proceedings before the Tax Court of the United States.

That P. L. Nathan, co-executor of the Last Will and Testament of Belle Alice Hamburger Nathan, died during the year 1946; that Evelyn Hamburger, who with said P. L. Nathan was a co-executrix of the Last Will and Testament of said decedent, is the duly appointed, qualified and acting executrix of the Last Will and Testament of said decedent. That in said Last Will and Testament Jennie Marx is named as a succeeding executrix in the event of the death of either said P. L. Nathan or Evelyn Hamburger. That said Jennie Marx is not as yet appointed as such succeeding executrix, nor has she qualified, nor is she acting as such. [464]

That affiant was misinformed at the time that he prepared said Petition for Review and accompanying documents to the effect that Jennie Marx had been so appointed, and for that reason made the statements in said Petition for Review under Article 3 entitled Venue, but that in truth and in fact Evelyn Hamburger is the sole appointed qualified and acting executrix.

Dated this 27th day of March, 1947.

/s/ J. EVERETT BLUM.

Subscribed and sworn to before me this 27th day of March, 1947.

[Seal]                      ENID ARCHER,  
Notary Public in and for the County of Los Angeles,  
State of California. [465]

[Title of Tax Court and Cause.]

MOTION TO AMEND PETITION FOR REVIEW OF DECISION OF THE TAX COURT OF THE UNITED STATES

Come now the petitioners above-named, by their attorneys of record, and move this Honorable Court for its order amending the Petition for Review of Decision of the Tax Court of the United States in the following particulars, to-wit:

That on Page 12 thereof under Section 3 Venue to substitute for the words "P. L. Nathan died in 1946 and Jennie Marx was duly appointed and qualified as co-executrix of the Last Will and Testament of Belle Alice Hamburger Nathan, deceased. Evelyn Hamburger and Jennie Marx are the acting Executrices of of the Estate"

the following words, to wit:

"P. L. Nathan died in 1946 and Evelyn Hamburger is the duly appointed, qualified and acting executrix of the Last Will and Testament of Belle Alice Hamburger Nathan, deceased."

That said motion will be based on the affidavit of J. Everett Blum attached to the motion concurrently filed herewith to amend the title of the above entitled [466] action, which said affidavit is referred to and incorporated herein as if said affidavit were set out herein in full.

Dated this 27th day of March, 1947.

Respectfully submitted,

/s/ CLAUDE I. PARKER,

/s/ RALPH W. SMITH,

/s/ J. EVERETT BLUM,

/s/ L. A. LUCE,

Counsel for Petitioners.

Personal service of the foregoing Motion is hereby acknowledged this 31st day of March, 1947.

/s/ J. P. WENCHEL, CAR

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Respondent.

[Endorsed]: Filed and granted March 31, 1947.  
Signed Eugene Black, judge. [467]

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[Title of Tax Court and Cause.]

PETITIONER'S DESIGNATION OF  
CONTENTS OF RECORD ON REVIEW

To the Clerk of The Tax Court of The United  
States:

The petitioner hereby designates for inclusion in the record on review in the above-entitled proceeding the following:

The complete record of all the proceedings and evidence taken before The Tax Court of the United States and all matters required by Subdivision (g)



of Rule 75 of the Federal Rules of Civil Procedure, including the following:

1. Docket entries of all proceedings before the Tax Court.
2. Pleadings before the Tax Court.
  - (a) Petition, including attached copy of deficiency letter;
  - (b) Amended petition to conform to proof;
  - (c) Answer to Petition;
  - (d) Answer to Amended Petition;
3. The Memorandum Findings of Fact and Opinion of the Tax Court.
4. Order entered July 22, 1946, Amending Opinion of July 17, 1946.
5. Motion for Rehearing and denial thereof.
6. Motion for Reconsideration and denial thereof.
7. Motion for review by Full Court and denial thereof.
8. The decision of the Tax Court. [468]
9. The official transcript of oral testimony and the whole thereof.
10. Respondent's Exhibits A, C, D, E and F, introduced in evidence at the hearing before the Tax Court.
11. Stipulation of Facts with Exhibits 1 to 9 inclusive, thereto attached.
12. The Petition for Review by the United States Circuit Court of Appeals for the Ninth Circuit.
13. Notice of Filing of Petition for Review, to-

gether with Proof of Service thereof, and of service of a copy of the Petition for Review.

14. Petitioner's motion to amend the title of this cause, with the attached affidavit of J. Everett Blum, together with the Order of the Tax Court entered thereon.

15. Petitioner's motion to amend petition for review of decision of The Tax Court of the United States, together with order of the Tax Court entered thereon.

16. This designation of contents of record on review.

17. Petitioner's statement of points and designation of contents of the record to be printed.

Dated April 4, 1947.

/s/ CLAUDE I. PARKER, LAL

/s/ RALPH W. SMITH, LAL

/s/ J. EVERETT BLUM, LAL

/s/ L. A. LUCE,

Counsel for Petitioner.

Service of a copy of the within designation is hereby admitted and agreed to this 4th day of April, 1947.

/s/ J. P. WENCHEL, CAR

Chief Counsel,

Bureau of Internal Revenue,

Attorney for the

Respondent.

Filed April 15, 1947. [469]

United States Circuit Court of Appeals  
for the Ninth Circuit

Tax Court Docket  
No. 3992

ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, EVELYN HAMBURGER and  
JENNIE MARX, Executrices,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITIONER'S STATEMENT OF POINTS TO  
BE RELIED UPON AND DESIGNATION  
OF PARTS OF RECORD TO BE PRINTED.

Come now the petitioners for review in the above entitled cause, by and through their counsel, and state that the points upon which they intend to rely in this case are as follows:

The Tax Court of the United States erred:

(A) In determining and deciding without any evidence or substantial evidence in support thereof a value of \$1,000.00 per share for the stock of A. Hamburger & Sons.

(B) In determining and deciding, without any evidence or substantial evidence in support thereof, a value of \$3,900.00 per share for the stock of Hamburger Realty Company.

(C) In denying petitioners' Motion for Rehearing.

(D) In denying petitioners' Motion for Reconsideration.

(E) In denying petitioners' Motion for Review by the Full Court of the Opinion entered on July 17, 1946.

(F) In determining and deciding contrary to the evidence [470] and to the findings of fact that the dividend paying policy of A. Hamburger & Sons was abnormal.

(G) In determining and deciding contrary to the evidence and the findings of fact that the system of paying dividends by A. Hamburger & Sons to stockholders profited the stockholders more from receiving the use of the assets of the corporation to their own individual profit than they would have profited by receiving normal dividends.

(H) In determining and deciding without any evidence and contrary to the findings of fact that the assets of A. Hamburger & Sons could have been invested in bonds on the market returning four per cent interest and of extremely high security.

(I) In failing to determine and decide that the open accounts to stockholders shown on the balance sheet of A. Hamburger & Sons was a mere anticipation of the dividends to be declared by said company for the year 1941.

(J) In determining and deciding that an amount equivalent to the loans to stockholders shown on the balance sheet of A. Hamburger & Sons could have been invested to yield the corporation a four per cent return thereon.

(K) In determining and deciding that a four

per cent yield on an amount equivalent to the loans to stockholders shown on the balance sheet of A. Hamburger & Sons would have equaled \$50,000.00 more income available for dividends.

(L) In failing to determine and decide, as found in the findings of fact, that the very reasons determined and decided as eliminating the earnings factor and dividend paying factor as valuation factors, would have been of prime importance to a [471] purchaser of a minority stock interest in A. Hamburger & Sons.

(M) When determining the fair market value of the stock of A. Hamburger & Sons, in failing to take into consideration:

- (1) The company's earning power;
- (2) The company's dividend-paying capacity;
- (3) The marketability of the stock;
- (4) The testimony of expert witnesses;
- (5) The status of the management, present and future;
- (6) The comparison with other securities;
- (7) The fact that the interest here to be valued is a minority interest;
- (8) The trend of the market and economic conditions;
- (9) All other relevant factors having a bearing upon the stock and the value thereof, as required by respondent's regulations and established court decisions, including net worth.

(N) In determining and deciding that the per



share fair market value of the stock of A. Hamburger & Sons was a sum equivalent to the value of its net assets divided by the number of its outstanding shares.

(O) In determining and deciding that the business operations of A. Hamburger & Sons were abnormal.

(P) In determining and deciding contrary to the evidence and to the findings of fact that the dividend paying policy of Hamburger Realty Company was abnormal. [472]

(Q) In determining and deciding contrary to the evidence and the findings of fact that the system of paying dividends by Hamburger Realty Company to stockholders profited the stockholders more from receiving the use of the assets of the corporation to their own individual profit than they would have profited by receiving normal dividends.

(R) In failing to determine and decide, as found in the findings of fact, that the very reasons determined and decided as eliminating the earnings factor and dividend-paying factor as valuation factors, would have been of prime importance to a purchaser of a minority stock interest in Hamburger Realty Company.

(S) When determining the fair market value of the stock of Hamburger Realty Company, in failing to take into consideration:

- (1) The company's earning power;
- (2) The company's dividend-paying capacity;

- (3) The marketability of the stock;
- (4) The testimony of expert witnesses;
- (5) The status of the management, present and future;
- (6) The comparison with other securities;
- (7) The fact that the interest here to be valued is a minority interest;
- (8) The trend of the market and economic conditions;
- (9) All other relevant factors having a bearing upon the stock and the value thereof, as required by respondent's regulations and established court decisions, including net worth.

(T) In determining and deciding that the per share fair market value of the stock of Hamburger Realty Company was a sum equivalent to the value of its net assets divided by the number of its outstanding shares.

(U) In determining and deciding that the business operations of Hamburger Realty Company were abnormal.

(V) When, in determining and deciding that value of the Hamburger Realty Company stock, it eliminated the earnings factor because the value of the May Company building had been determined by capitalizing the lease rentals.

(W) In determining and deciding that the cases of *Melville Hanscom*, 24 B.T.A. 173; *Estate of Henry E. Huntington*, 36 B.T.A. 698; and *Bank of California v. Commissioner*, 173 Fed. (2d) 428, are authority or even persuasive in the instant case.

(X) In failing to give effect to Section 81.10 of Respondent's Regulations 105.

(Y) In failing to give effect to the purchasers' views in determining fair market value.

(Z) In giving effect only to the sellers' views in determining fair market value.

(AA) In determining and deciding the fair market value of the stocks involved contrary to law.

(BB) In determining and deciding the fair market value of the stocks involved contrary to its Findings of Fact.

(CC) In rendering a decision contrary to law.

(DD) In rendering a decision contrary to its Findings of Fact. [474]

Petitioners hereby designate the entire record as certified to the Clerk of the above entitled Court, as necessary to be printed for the consideration of the points set forth above. Petitioners also designate this Statement of Points and Designation as necessary to be printed.

Dated March 22, 1947.

/s/ CLAUDE I. PARKER,

/s/ RALPH W. SMITH,

/s/ J. EVERETT BLUM,

/s/ L. A. LUCE,

Counsel for Petitioners.

Personal service of a copy of the foregoing State-

ment of Points and Designation is hereby acknowledged this ..... day of ....., 1947.

/s/ J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Respondent.

Filed T.C.U.S. March 25, 1947. [475]

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The Tax Court of the United States  
Washington

Docket No. 3992

ESTATE OF BELLE ALICE HAMBURGER  
NATHAN, EVELYN HAMBURGER,  
Executrix,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### CERTIFICATE

I, Victor S. Mersch, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 475, inclusive, contain and are a true copy of the transcript of records, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 5th day of May, 1947.

[Seal]      /s/ VICTOR S. MERSCH, EMT  
Clerk,  
The Tax Court of the  
United States.

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[Endorsed]: No. 11625. United States Circuit Court of Appeals for the Ninth Circuit. Estate of Belle Alice Hamburger Nathan, Evelyn Hamburger, Executrix, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed May 12, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



